

No. 16334 ✓

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United States  
Court of Appeals  
for the Ninth Circuit

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CANADIAN PACIFIC RAILWAY CO., a corpo-  
ration, Appellant,  
vs.

UNITED STATES OF AMERICA, Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Western District of Washington, Northern Division

FILED

APR 23 1959

PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF PROCTORS

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Proctors for Appellee.



United States District Court, Western District of  
Washington, Northern Division

In Admiralty No. 16340

UNITED STATES OF AMERICA,

Libelant,

vs.

CANADIAN PACIFIC RAILWAY CO., a corporation, as owner and operator of the SS  
PRINCESS LOUISE, Respondent.

### LIBEL IN PERSONAM

To the Honorable, the Judges of the Above-Entitled  
Court:

The libel of the United States of America against the Canadian Pacific Railway Company, a corporation, in a cause of collision, civil and maritime, alleges upon information and belief as follows:

#### I.

That at all times hereinafter mentioned the libelant was and is now a sovereign and owner of the Alaska Communications System Submarine Cable in Puget Sound between Seattle and Fort Lawton, Washington, which cable was laid and maintained during all of said times, beneath the surface of the waters of Puget Sound, pursuant to and in compliance with all the statutes, rules and regulations applicable to the construction and maintenance of said cable by the libelant.

## II.

That at all the times herein mentioned the respondent, Canadian Pacific Railway Company, was and is a corporation organized and existing under and by virtue of the laws of the Dominion of Canada, and doing business in the City of Seattle, County of King, State of Washington, and within the jurisdiction of this Honorable Court, and was the owner and operator of the SS Princess Louise.

## III.

That on March 21, 1955, while attempting to dock at Pier 65, Seattle, Washington, the SS Princess Louise did cause or permit her anchor to strike, pick up, collide with, drag out of position and break said Alaska Communications System Submarine Cable.

## IV.

That the striking of said cable with said anchor as aforesaid and the consequent damages to and break in the cable were not caused or contributed to by libelant, said cable being properly placed, marked and maintained; but were caused solely by the fault and negligence of the respondent, SS Princess Louise, and those in charge of her, in the following respects, among others presently unknown to the libelant which will be pointed out at the trial hereof:

(1) That those in charge of said steamship failed to avoid striking said cable with the anchor or anchors of said vessel.

(2) That those in charge of said vessel were in-



competent, inefficient and inattentive to their duties.

(3) That those in charge of said vessel did drop its anchor and drag it into the known area of the said cable in violation of the restrictions against anchoring or dropping an anchor in the cable area in which said submarine cable was laid and maintained.

(4) That those in charge of said vessel did negligently drop the anchor upon and in the vicinity of said cable or did negligently allow said anchor to drag and come in contact with the said cable on its proper station, said cable being plainly charted and marked.

#### V.

In consequence of said damage and break in the Alaska Communications System Submarine Cable the necessary repairs have been accomplished at the reasonable sum of approximately seven thousand eighteen dollars and thirty-two cents (\$7,018.32), in which sum libelant herein has been damaged.

#### VI.

All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libelant prays that process in due form of law according to the practise of this Honorable Court in causes of Admiralty and Maritime jurisdiction may issue against said respondent and that it be cited to appear and answer on oath all and singular the matters aforesaid and that this

Honorable Court be pleased to decree to libelant its damages with interests and costs; and that libelant may have such other and further relief as in law and justice it may be entitled to receive.

/s/ CHARLES P. MORIARTY,  
United States Attorney,

/s/ KEITH R. FERGUSON,  
Special Asst. to the Attorney  
General,

/s/ JACOB A. MIKKELBORG,  
Assistant U. S. Attorney,  
Proctors for Libelant United  
States of America.

Duly Verified.

[Endorsed]: Filed October 24, 1957.

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[Title of District Court and Cause.]

## ANSWER

The answer of respondent, Canadian Pacific Railway Company, a corporation, to the libel of the United States of America, in an alleged cause of collision, civil and maritime, respectfully shows:

### I.

Admits that the libelant is the owner of the Alaska Communications System submarine cable in Puget Sound between Seattle and Fort Lawton, Washington, which cable extends below the surface

of the waters of Puget Sound; and denies the remaining allegations of Article I thereof.

II.

Admits the allegations of Article II thereof.

III.

Admits the admiralty and maritime jurisdiction of the United States and this Honorable Court, and denies the remaining allegations of Articles III, IV, V and VI thereof.

IV.

Respondent alleges that if the anchor of the SS Princess Louise struck and damaged the said Alaska Communications System submarine cable on or about March 21, 1955 while attempting to dock at Pier 65, Seattle, Washington, such damage was caused without fault or neglect on the part of the respondent, the SS Princess Louise, her officers and crew.

Wherefore, respondent prays that the libel herein be dismissed and that respondent have and recover its costs and disbursements herein.

BOGLE, BOGLE & GATES,  
/s/ THOMAS L. MORROW,  
Proctors for Respondent.

Duly Verified.

Acknowledgment of Service Attached.

[Endorsed]: Filed December 11, 1957.

[Title of District Court and Cause.]

### PRETRIAL ORDER

As the result of a pretrial conference heretofore had on August 12, 1958 in Room 1016 of the United States Court House, Seattle, Washington, the libelant was represented by Charles P. Moriarty, United States Attorney for the Western District of Washington, Richard F. Broz, Assistant United States Attorney for said District, and Jacob A. Mikkelsen, Assistant United States Attorney for said District, and respondent was represented by Bogle, Bogle & Gates, their attorneys of record, and the following issues of fact and law were framed and exhibits identified:

#### Admitted Facts

The following are the admitted facts herein:

1. That the libelant was at all times libelant herein, and is now a sovereign and owner of the Alaska Communications System Submarine Cable in Puget Sound between Seattle and Fort Lawton, Washington, which cable was laid and maintained during all times relevant to the subject action beneath the surface of the waters of Puget Sound.

2. That at all times pertinent to the subject action the respondent Canadian Pacific Railway Company was and is a corporation organized and existing under and by virtue of the laws of the Dominion of Canada and doing business in the City of Seattle, County of King, State of Washington, and within the jurisdiction of this Honorable Court,

and was the owner and operator of the SS Princess Louise.

3. That on March 21, 1955 the SS Princess Louise was engaged in docking activities in the vicinity and at Pier 64, Seattle, Washington. That the submarine cable referred to in paragraph 1 above was parted during the week of March 20, 1955, necessitating subsequent repairs by the said Alaska Communications System.

4. That the cause of action as alleged is within the admiralty and maritime jurisdiction of the United States and of this Court.

#### Libelant's Contentions

Libelant's contentions are as follows:

1. That the parting of said cable was occasioned by the negligent maneuvering by the SS Princess Louise and the consequent damages to and break in the cable were not caused or contributed to by libelant, said cable being properly placed, marked and maintained; but were caused solely by the fault and negligence of the respondent, SS Princess Louise, and those in charge of her, in the following respects, among others presently unknown to the libelant which will be pointed out at the trial hereof:

(a) That those in charge of said steamship failed to avoid striking said cable with the anchor or anchors of said vessel.

(b) That those in charge of said vessel were incompetent, insufficient and inattentive to their duties.



(c) That those in charge of said vessel did drop its anchor and drag it into the known area of the said cable in violation of the restrictions against anchoring or dropping an anchor in the cable area in which said submarine cable was laid and maintained.

(d) That those in charge of said vessel did negligently drop the anchor upon and in the vicinity of said cable or did negligently allow said anchor to drag and come in contact with the said cable on its proper station, said cable being plainly charted and marked.

2. In consequence of said damage and break in the Alaska Communications System Submarine Cable the necessary repairs have been accomplished at the reasonable sum of approximately nine thousand dollars (\$9,000.00), in which sum libelant herein has been damaged.

### Respondent's Contentions

Respondent's contentions are as follows:

1. That the cable was not broken, parted or damaged by the respondent.

2. That the cable was not broken, parted or damaged in a known or marked cable area.

3. That the respondent was guilty of no fault or negligence under the circumstances.

4. That fault or negligence on the part of the respondent, if any, was not the proximate cause of the alleged loss or damage.

5. That the libelant has the burden of proving fault or negligence of respondent, and that such

fault or negligence was the proximate cause of the alleged loss or damage.

### Issues of Fact

The following are the issues of fact to be determined by the Court herein:

1. Was the subject cable broken, parted or damaged by the respondent.
2. Was the said cable damaged in a known or marked cable area.
3. Was the respondent at fault or negligent, and if so, was such fault or negligence the proximate cause of the alleged damage to the cable.
4. What damages, if any, did libelant sustain as a proximate result of the negligence or fault, if any, of the respondent.

### Issues of Law

The following are the issues of law to be determined by the Court herein:

1. Was the respondent at fault or negligent, and if so, was such fault or negligence the proximate cause of the alleged damage to the cable; what damages, if any, did libelant sustain as a proximate result of the negligence or fault, if any, of the respondent.

### Exhibits

The following exhibits were produced and may be received in evidence if otherwise admissible without further authentication, it being admitted that each is what it purports to be:

## Libellant's Exhibits

L-1. C.&G.S. map 6449, corrected to March 21, 1955.

L-2. C.&G.S. certified copy of sounding chart.

L-3. C.&G.S. certified copy of tide record for March 21, 1955.

L-4. Log of Alaska Communications System Cable Ship Lenoir.

L-5. Copy of War Department permit under date 16 June 1949 relating to installation of submarine cable from Seattle to Fort Lawton.

## Respondent's Exhibits

R-1. C.&G.S. (Coast & Geodetic Survey) map 6449.

R-2. Pilot house log of SS Princess Louise.

R-3. Engine room log of SS Princess Louise.

R-4. Time Sheet—March, 1955—of SS Princess Louise.

R-5. Port of Seattle Map of Seattle Harbor (issued 1937).

## Action by the Court

The Court has set this case for trial on August 19, 1958.

The foregoing pretrial order has been approved by the parties hereto, as evidenced by the signatures of their counsel hereon; and upon the filing hereof the pleadings pass out of the case and are superseded by this order, which shall not be amended



except by agreement of the parties and approval of the Court.

Done in Open Court this 19th day of August, 1958.

/s/ JOHN C. BOWEN.

Approved:

BOGLE, BOGLE & GATES,  
/s/ By THOMAS L. MORROW,

Attorneys for Respondent.

/s/ CHARLES P. MORIARTY,  
United States Attorney,

/s/ JACOB A. MIKKELBORG,  
Assistant U. S. Attorney,

/s/ RICHARD F. BROZ,  
Assistant U. S. Attorney,

Attorneys for Libelant.

[Endorsed]: Filed August 19, 1958.

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[Title of District Court and Cause.]

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on regularly for trial on August 19, 1958 before the Honorable John C. Bowen, Judge of the above entitled Court, libelant United States of America being represented by its proctors, Jacob A. Mikkeltorg and Richard F. Broz,

Assistant United States Attorneys for the Western District of Washington, the respondent Canadian Pacific Railway Co., a corporation, being represented by its proctors, Bogle, Bogle & Gates and Thomas L. Morrow, evidence being introduced, witnesses being heard and documentary evidence being introduced, the Court being fully advised in the premises, now makes the following:

### Findings of Fact

#### I.

That libelant, United States of America, is now and was during all the times herein mentioned a sovereign and owner of the United States Army Alaska Communications System Submarine Cable in Puget Sound laid between Pier 57, Seattle, and Fort Lawton, Washington, beneath the surface and on the bottom of Elliott Bay and Puget Sound.

#### II.

That said submarine cable was lawfully located and installed and maintained in accordance with the permit issued therefor by the War Department of the United States in 1949.

#### III.

That said submarine cable area was marked and charted on mariners' harbor charts of Elliott Bay and Puget Sound in general distribution among and available to all mariners on March 21, 1955 and for years prior thereto, and that said cable area was also posted with large signs warning of the cable area and warning against anchoring therein.

## IV.

That on March 21, 1955, SS Princess Louise, a cargo and passenger merchant steamer of 320 feet in length owned and operated by Canadian Pacific Railway Co., Inc., was engaged in docking maneuvers in Seattle Harbor in the vicinity of said cable area between the hours of 3:00 P.M. and 4:00 P.M. on said date.

## V.

That the Master and those in charge of SS Princess Louise at the time of her maneuvers on March 21, 1955 and for years prior thereto knew of and were charged with knowledge of the existence and boundaries of the said cable area and submarine cables laid therein.

## VI.

That the SS Princess Louise and those in charge of her did negligently drop and use her anchor in such close proximity to the cable area as to be unable to avoid contact with said submarine cable on the bottom laid therein.

## VII.

That the said anchor of SS Princess Louise was dropped and dragged while said ship was engaged in maneuvering in a southeasterly 35-mile wind between the hours of 3:00 P.M. and 4:00 P.M. on March 21, 1955, and as the result of said maneuvers did come into contact with and damage said submarine cable within the charted boundaries of said cable area and did break said submarine cable.

## VIII.

That the Master and those in charge of the SS Princess Louise failed to accurately observe and maintain her position clear of the charted, posted and known cable area while at the same time dragging her anchor to assist them in controlling her maneuvers.

## IX.

That the failure to accurately observe and maintain the positions and maneuvers of the Princess Louise clear of the charted, posted and known cable area while so engaged was the proximate cause of the fouling and damage to said submarine cable by SS Princess Louise.

## X.

That the fouling and damage to said submarine cable within the known cable area by dragging an anchor therein was or should have been foreseeable by the Master and those in charge of her maneuvers.

## XI.

That the breaking of said cable by SS Princess Louise is further supported by her presence in the cable area with her anchor down and dragging, and by the absence of any other ship in said area at the time.

## XII.

That the libelant, United States of America, as the proximate result of said damage to and breaking of said submarine cable, sustained direct damages in the total sum of \$6,954.23 for repair of said submarine cable, said damages being constituted of

direct labor, subsistence, fuel, cable and cable supplies expended, depreciation and overhead incurred in the period reasonably required for performance of repair by the United States Army cable repair ship Lenoir.

### XIII.

That the SS Princess Louise and those in charge of her were solely at fault and that their negligence was the proximate cause of the damage to and breaking of the United States Army Alaska Communications System submarine cable between Seattle and Fort Lawton.

### XIV.

That the libelant United States of America was not at fault and did not by any act contribute to the damage to said submarine cable which was operating and in use prior to 3:00 P.M. on March 21, 1955 and found to be inoperative at 4:00 P.M. on said date.

Done in Open Court this 15th day of September, 1958.

/s/ JOHN C. BOWEN,

United States District Judge.

From the foregoing Findings of Fact, the Court makes the following:

### Conclusions of Law

#### I.

That this Court has jurisdiction of the subject matter and parties herein.

## II.

That in the fouling, damage and breaking of the United States Army Alaska Communications System submarine cable between Seattle and Fort Lawton, the SS Princess Louise was solely at fault and her negligence and the negligent acts and omissions of those in charge of her proximately caused the damage to said submarine cable.

## III.

That the respondent, Canadian Pacific Railway Co., a corporation, owner of SS Princess Louise, is liable in personam to libelant, United States of America, for the sum of \$6,954.23, together with libelant's taxable costs, as the damages directly and proximately resulting from the negligent acts and omissions of the respondent and those in charge of the maneuvers of SS Princess Louise at the time she fouled, damaged and parted libelant's submarine cable.

## IV.

That libelant, United States of America, is entitled to a decree to be entered in its favor and against the respondent Canadian Pacific Railway Co., a corporation, for the sum of \$6,954.23, together with libelant's costs.

Done in Open Court this 15th day of September, 1958.

/s/ JOHN C. BOWEN,

United States District Judge.



Approved and Presented by:

/s/ JACOB A. MIKKELBORG,  
Assistant U. S. Attorney,  
Proctor for Libelant.

Acknowledgment of Service Attached.

[Endorsed]: Filed September 15, 1958.

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United States District Court, Western District of  
Washington, Northern Division

In Admiralty No. 16340

UNITED STATES OF AMERICA,

Libelant,

vs.

CANADIAN PACIFIC RAILWAY CO., a cor-  
poration, as owner and operator of the SS  
PRINCESS LOUISE, Respondent.

### DECREE

This matter having come on for trial on the 19th, 20th, 21st and 22nd day of August 1958 before the Honorable John C. Bowen, Judge of the above entitled Court, libelant United States of America being represented by its proctors Jacob A. Mikkeltborg and Richard F. Broz, Assistant United States Attorneys, respondent Canadian Pacific Railway Co., Inc., being represented by Thomas L. Morrow, Bogle, Bogle & Gates, evidence being introduced, witnesses being heard and documentary evidence being introduced, and Findings

of Fact and Conclusions of Law having been made and entered and the same having been filed with the Clerk of this Court, now therefore it is hereby

Ordered, Adjudged and Decreed that the libelant United States of America do have and recover from respondent Canadian Pacific Railway Co., Inc., the sum of \$6,954.23 together with libelant's costs now taxed at \$108.38.

Done in Open Court, this 15th day of September, 1958.

/s/ JOHN C. BOWEN,  
United States District Judge.

Presented and Approved by:

/s/ JACOB A. MIKKELBORG,  
Assistant U. S. Attorney.

Acknowledgment of Service Attached.

[Endorsed]: Filed September 15, 1958.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that Canadian Pacific Railway Co., respondent above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment and decree entered in this action on the 15th day of September, 1958.

Dated this 9th day of December, 1958.

BOGLE, BOGLE & GATES,  
Attorneys for Respondent.

[Endorsed]: Filed December 12, 1958.



[Title of District Court and Cause.]

## SUPERSEDEAS AND COST BOND

Know All Men by These Presents:

That American Surety Company of New York, a corporation created, organized and existing under and by virtue of the laws of the State of New York, having its principal place of business in the City of San Francisco, State of California, and duly authorized to carry on a general casualty insurance business within the State of Washington and in the Courts of the United States, is held and firmly bound unto the United States of America, libelant, in the full and just sum of Ten Thousand Dollars (\$10,000), to be paid to the said United States of America, its administrators, executors, successors or assigns, to which payment, well and truly to be made, it binds itself, its successors and assigns firmly by these presents.

Signed and sealed this 12th day of December, 1958.

Whereas, on September 15, 1958, in an action pending in the United States District Court for the Western District of Washington, between the United States of America, libelant, and Canadian Pacific Railway Co., as respondent, civil action in Admiralty No. 16340, final judgment was rendered in favor of the said libelant, United States of America, and against Canadian Pacific Railway Co., respondent, for Six Thousand Nine Hundred Fifty-four Dollars and Twenty-three Cents (\$6,954.23), together with costs in the sum of One Hundred

Eight Dollars Thirty-eight Cents (\$108.38); and the said respondent, Canadian Pacific Railway Co., having filed a notice of appeal from such judgment to the United States Court of Appeals for the Ninth Circuit;

Now, Therefore, the condition of this obligation is such, that if the said respondent, Canadian Pacific Railway Co., shall prosecute its appeal to effect and shall satisfy the judgment in full, together with costs, interests and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, or shall satisfy in full such modification of the judgment and such costs, interests and damages as the said Court of Appeals may adjudge and award, then this obligation to be void; otherwise to remain in full force and effect.

[Seal]      AMERICAN SURETY COMPANY  
OF NEW YORK,

/s/ By B. L. LEASURE,  
Its Attorney in Fact.

Bond #37-580-957.

Approved as to form and amount:

/s/ JACOB A. MIKKELBORG,  
Assistant U. S. Attorney.

Approved: December 12, 1958.

/s/ JOHN C. BOWEN,  
United States District Judge.

[Endorsed]: Filed December 12, 1958.

[Title of District Court and Cause.]

STATEMENT OF THE POINTS UPON  
WHICH APPELLANT WILL RELY

1. The trial court correctly found and concluded that the United States Army Alaska Communications System Submarine Cable was lawfully located and installed in accordance with the 1949 permit issued therefor by the War Department of the United States. Findings of Fact II.

2. The trial court erred in finding and concluding that the said Submarine Cable was maintained in accordance with said 1949 War Department permit. Findings of Fact 11.

3. The trial court erred in failing to find and conclude that early in 1953 the said Submarine Cable was relocated by the cable ship Basil O. Lenoir in a location substantially differing from that provided for in said 1949 War Department permit.

4. The trial court erred in failing to find and conclude that said Submarine Cable as relocated in 1953 and as maintained on March 21, 1955 extended outside the marked boundaries of the cable area as marked on mariners' charts.

5. The trial court correctly found and concluded that the submarine cable area as authorized by the War Department permit in 1949, was marked and charted on Mariners' Harbor Charts of Elliott Bay and Puget Sound in general distribution among and available to all mariners on March 21, 1955 and for years prior thereto, and that said cable area

was also posted with large signs warning of the cable area and warning against anchoring therein. Findings of Fact III.

6. The trial court erred in failing to find and conclude that Mariners' Harbor Charts of Elliott Bay and Puget Sound in general distribution among and available to all mariners on March 21, 1955, did not encompass the area of said Seattle-Fort Lawton submarine cable as relocated in early 1953 and so maintained on March 21, 1955.

7. The court erred in finding and concluding that the Master and those in charge of the SS Princess Louise at the time of her maneuvers on March 21, 1955 and for years prior thereto knew of and were charged with knowledge of the existence and boundaries of said cable area and submarine cables laid therein, insofar as said finding and conclusion refer to said Seattle-Fort Lawton submarine cable relocated out of position in 1953. Findings of Fact V.

8. The trial court erred in failing to find and conclude that the Master and those in charge of the SS Princess Louise at the time of her maneuvers on March 21, 1955, had no information or knowledge that said United States Army Alaska Communications System Submarine Cable had been relocated in 1953 and maintained out of position and outside the marked boundaries of a cable area appearing on Mariners' Harbor Chart of Elliott Bay and Puget Sound and in general distribution to mariners on March 21, 1955.

9. The trial court erred in finding and conclud-

ing that the SS Princess Louise and those in charge of her did negligently drop and use her anchor in such close proximity to the cable area as to be unable to avoid contact with the said submarine cable on the bottom laid therein. Findings of Fact VI.

10. The trial court erred in failing to find and conclude that the SS Princess Louise and those in charge of her exercised good seamanship in the paramount interests of the safety of the ship and the passengers and crew aboard in the dropping of her anchor and use of her anchor and in due regard to the marked cable area.

11. The trial court erred in finding and concluding that as a result of the maneuvers of the SS Princess Louise that she did come in contact with the said submarine cable within the charted boundaries of said cable area. Findings of Fact VII.

12. The trial court erred in finding and concluding that the anchor of the SS Princess Louise on March 21, 1955, did come into contact with and damage and break said submarine cable.

13. The trial court erred in failing to find and conclude that if the anchor of the SS Princess Louise during maneuvers did come into contact with and damage said submarine cable and break the same, that the said submarine cable at the point of contact with said anchor was not within the charted boundaries of said cable area.

14. The trial court erred in failing to find and conclude that there was not sufficient evidence to



establish that the anchor of the SS Princess Louise came into contact with and damaged said submarine cable during maneuvers during the hours of 3:00 P.M. and 4:00 P.M. on March 21, 1955.

15. The trial court erred in finding and concluding that the Master and those in charge of the SS Princess Louise failed to accurately observe and maintain her position clear of the charted, posted and known cable area, while at the same time dragging her anchor to assist them in controlling her maneuvers. Findings of Fact VIII.

16. The trial court erred in failing to find and conclude that the Master and those in charge of the SS Princess Louise had no notice and knowledge that the said submarine cable had been relocated in 1953 and was out of position on March 21, 1955.

17. The trial court erred in failing to find and conclude that the Master and those in charge of the SS Princess Louise on March 21, 1955 maneuvered said vessel properly and in respect to the submarine area as marked on their existing Mariners' Charts.

18. The trial court erred in finding and concluding that the failure to accurately observe and maintain the positions and maneuvers of the SS Princess Louise clear of the charted, posted and known cable area was the proximate cause of the fouling and damage to said submarine cable by the SS Princess Louise. Findings of Fact IX.

19. The trial court erred in failing to find and

conclude that the sole proximate cause of fouling and damage to said submarine cable by the SS Princess Louise or some other vessel was libelant's relocation and maintaining said submarine cable outside and beyond the boundaries of the cable area as marked on mariners' charts and/or failure of the libelant to provide and mark mariners' charts so as to show said submarine cable as relocated.

20. The trial court erred in finding and concluding that the fouling and damage to said relocated submarine cable was, or should have been, foreseeable by the Master and those in charge of her maneuvers. Findings of Fact X.

21. The trial court erred in failing to find and conclude that the fouling and damage, if any, to said submarine cable was not within a known cable area and that the Master and those in charge of the maneuvers of the SS Princess Louise could not, therefore, foresee that the dragging of an anchor would foul or cause damage to said submarine cable.

22. The trial court erred in finding and concluding that the breaking of said cable by the SS Princess Louise is further supported by her presence in the cable area with her anchor down and dragging, and by the absence of any other ship in said area at the time. Findings of Fact XI.

23. The trial court erred in failing to find and conclude that libelant had failed to establish by a fair preponderance of the evidence that the anchor

of the SS Princess Louise contacted, broke and damaged said submarine cable by having her anchor down during maneuvers between 3:00 P.M. and 4:00 P.M. on March 21, 1955.

24. The trial court erred in finding and concluding that the libelant, as a proximate result of the breaking of said submarine cable, sustained direct damages in the total sum of Six Thousand Nine Hundred Fifty-four and 23/100 Dollars (\$6,954.23) for repair of said submarine cable. Findings of Fact XII.

25. The trial court erred in failing to find and conclude that libelant had not sustained the burden of proving damages resulting from the breaking of said submarine cable.

26. The trial court erred in finding and concluding that the SS Princess Louise and those in charge of her were solely at fault and their negligence was the proximate cause of damage to and breaking of the United States Army Alaska Communications System Submarine Cable between Seattle and Fort Lawton. Findings of Fact XIV.

27. The trial court erred in finding and concluding that the libelant, United States of America, was not at fault and did not by any act contribute to the damage to said submarine cable which was operating and in use prior to 3:00 P.M. on March 21, 1955 and found to be inoperative at 4:00 P.M. on said date. Findings of Fact XIV.

28. The trial court erred in failing to find and



conclude that the libelant, United States of America, was at fault in relocating and maintaining said submarine cable outside the marked cable area and contrary to the War Department permit of 1949 and that its faults caused and contributed to the damages to said submarine cable.

29. The trial court erred in concluding as a matter of law that in the fouling, damage and breaking of the United States Army Alaska Communications System Submarine Cable between Seattle and Fort Lawton, the SS Princess Louise was solely at fault and her negligence and the negligent acts and omissions of those in charge of her proximately caused the damage to said submarine cable. Conclusions of Law II.

30. The trial court erred in concluding as a matter of law that the respondent is libel in personam to libelant, United States of America, for the sum of \$6,954.23, together with libelant's taxable costs, as the damages directly and proximately resulting from the negligent acts and omissions of the respondent and those in charge of the maneuvers of the SS Princess Louise at the time she fouled, damaged and parted libelant's submarine cable. Conclusions of Law III.

31. The trial court erred in concluding as a matter of law that the libelant, United States of America, is entitled to a decree to be entered in its favor and against respondent, Canadian Pacific Railway Co., a corporation, for the sum of \$6,954.23, together with libelant's costs. Conclusions of Law IV.

32. The trial court erred in failing to conclude as a matter of law that if the United States Army Alaska Communications System Submarine Cable between Seattle and Fort Lawton was fouled, damaged or broken, libelant was solely at fault for relocating and maintaining said submarine cable contrary to the 1949 War Department permit and outside the marked cable area and in failing to publish and issue charts showing the cable area as enlarged by said relocation.

33. The trial court erred in admitting and considering hearsay evidence on the question of damages.

34. The trial court erred in refusing to admit and consider respondent's Exhibit A-11, being Coast & Geodetic Survey Chart 6446, published subsequent to March 21, 1955, and showing an enlarged cable area.

35. The trial court erred in awarding a decree to libelant for damages and in failing to grant a decree in favor of respondent and dismiss the action.

36. The trial court erred in failing to assess and to take into consideration libelant's fault.

BOGLE, BOGLE & GATES,

/s/ By THOMAS L. MORROW,

Proctors for Respondent.

Acknowledgment of Service Attached.

[Endorsed]: Filed January 13, 1959.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America

Western District of Washington—ss.

I, John A. Burns, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 of the United States Court of Appeals for the Ninth Circuit and designation of counsel, I am transmitting herewith as the record on appeal herein to the United States Court of Appeals for the Ninth Circuit at San Francisco, the following original papers in the file dealing with the action, said papers being identified as follows:

1. Libel, filed Oct. 24, 1957.

6. Answer of Canadian Pacific Railway Company, filed 12-11-57.

18. Pretrial Order, filed Aug. 19, 1958.

21. Findings of Fact and Conclusions of Law, filed 9-15-58.

23. Decree, filed Sept. 15, 1958.

24. Motion to Amend Findings of Fact, Conclusions of Law and Judgment, filed Sept. 25, 1958.

25. Motion for New Trial, filed Sept. 25, 1958.

26. Order Denying Motion to Amend Findings of Fact, Conclusions of Law and Decree, filed Oct. 13, 1958.

27. Order Denying Motion for New Trial, filed Oct. 13, 1958.

28. Notice of Appeal, filed Dec. 12, 1958.

29. Supersedeas and Cost Bond, filed Dec. 12, 1958.

30. Order for Transmission of original exhibits, filed Jan. 13, 1959.

31. Designation of Contents of Record on Appeal, filed Jan. 13, 1959.

32. Statement of Points Upon Which Appellant Will Rely, filed Jan. 13, 1959.

33. Court Reporter's Transcript of Proceedings (Statement of Facts) in two volumes, filed Jan. 14, 1959.

Libelant Exhibits 1 to 5 inclusive, and

Respondent Exhibits A-1, and A-2 to A-11 inclusive.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by appellant for preparation of the record on appeal in this cause, to-wit: Filing fee, Notice of Appeal, \$5.00; and that said amount has been paid to me by proctors for appellant.

Witness my hand and official seal at Seattle this 15th day of January, 1959.

[Seal]

JOHN A. BURNS,  
Clerk,

/s/ By TRUMAN EGGER,  
Chief Deputy.

In the District Court of the United States, Western  
District of Washington, Northern Division

No. 16340

UNITED STATES OF AMERICA

Libelant,

vs.

CANADIAN PACIFIC RAILWAY CO., a  
corporation, as owner and operator of the  
SS PRINCESS LOUISE,

Respondent.

### TRANSCRIPT OF PROCEEDINGS

Be it remembered, that the above-entitled and numbered cause was heard before the Honorable John C. Bowen, a Judge of the above-entitled Court, beginning Tuesday, August 19, 1958, at 10:10 o'clock a.m.

The libelant was represented by Mr. Jacob A. Mikkeltborg and Mr. Richard F. Broz, Assistant United States Attorneys.

The respondent was represented by Mr. Thomas L. Morrow, of Messrs. Bogle, Bogle & Gates, Attorneys at Law.

Whereupon, the following proceedings were had and done, to-wit: [1]

The Court: In the case of United States of America versus Canadian Pacific Railway Co., are

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\*Page numbering appearing at foot of page of original certified Reporter's Transcript.

the parties and Counsel ready to proceed with the trial of that case?

Mr. Morrow: Ready, your Honor.

Mr. Mikkelborg: Ready, your Honor.

The Court: I understood there was to be settled and offered for entry a pretrial order.

(Thereupon, the pretrial order was settled and entered.)

(Mr. Mikkelborg made an opening statement in behalf of libelant.)

(Mr. Morrow made an opening statement in behalf of respondent.)

The Court: The libelant may call its first witness or otherwise proceed.

Mr. Mikkelborg: The libelant will call as its first witness Captain Campbell of the Princess Louise.

The Court: Come forward and be sworn as a witness, Captain Campbell. [2]

#### JOHN A. CAMPBELL

called as a witness in behalf of libelant, being first duly sworn, was examined and testified as follows:

##### Direct Examination

Q. (By Mr. Mikkelborg): Will you please state your name, sir?

A. John A. Campbell.

Q. Will you spell it, please?

A. C-a-m-p-b-e-l-l.

Q. Captain, what was your position in March of 1955?

A. I was master on the Princess Louise.



(Testimony of John A. Campbell.)

Q. With regard to the Princess Louise, Captain, would you state her general description, that is her size, her length, her beam, her tonnage, her engines, her screw, type of engines, and that general information?

A. Well, she's approximately 320 feet long, 4,000 tons, triple expansion single screw, beam of about 50 feet.

Q. By "triple expansion" do you mean that she has reciprocating type engines?

A. Reciprocating, yes.

Q. Captain, who is the owner of the Princess Louise?

A. The Canadian Pacific Railway Company.

Q. Captain, where was the Princess Louise on the afternoon of March 21st?

A. In Seattle harbor, in the usual course of events. [3]

Mr. Mikkelsen: That will be all. You may cross examine, Counsel.

The Court: Having in mind that possibly your side will call this witness as its witness.

Mr. Morrow: I have no questions at this time.

The Court: You may step down, Captain.

The Witness: Thank you, sir.

(Witness excused.)

The Court: Call the next witness.

Mr. Broz: If it please the Court, the next witness will be Colonel George F. Rogers.

The Court: Colonel Rogers will come forward and be sworn as a witness.



## GEORGE F. ROGERS,

called as a witness in behalf of libelant, being first duly sworn, was examined and testified as follows:

## Direct Examination

Q. (By Mr. Broz): Colonel, will you state your name, address and occupation, please?

A. George F. Rogers, Office Chief Signal Officer, Washington 25, D. C., Colonel, United States Army.

Q. What branch of the Army are you in, Colonel?

A. Signal Corps. [4]

Q. How long have you been in the Signal Corps? A. Since April of '42.

Q. How long have you been engaged in your present duties?

A. February 1st, 1957—'8.

Q. And what did you do before that?

A. Prior to that I was in Japan, commanding long lines for all the military services in Japan.

Q. And what was your duty assignment prior to your assignment in Japan?

A. Executive Officer, Alaska Communication System.

Q. Was that in Seattle, Washington?

A. At Seattle, Washington.

Q. How long did you hold that post?

A. I left there in September of '55, I came out in September of '52.

Q. What were your duties as executive officer for the Alaska Communication System?

(Testimony of George F. Rogers.)

A. I was assistant to the C.O. I assisted him in operation, maintenance, running the system. When he was away I commanded in his absence.

Q. Did your duties include the supervision and maintenance of submarine cables?

A. Yes, sir. That's part of the system.

Q. Are you acquainted with the position of the Alaska Communication System cable between Seattle and Fort [5] Lawton?

A. Yes, sir.

Q. Was that a submarine cable under the jurisdiction of the Alaska Communication System during your tour of duty?      A. It was.

Q. Was that cable in operation during March of 1955?      A. Yes, it was.

Q. Can you state——

The Court: Were you on that duty at that time, the duty you just described the next before the last answer?      A. Yes, sir.

The Court: You may proceed.

Q. (By Mr. Broz): Can you state where the Seattle end of the cable terminates?

A. It terminates in a manhole off of Pier 57.

Q. Are you acquainted with the Seattle waterfront?

A. That area down around there I am, yes, sir.

Q. Do you know where Pier 57 is?

A. Yes, sir.

Q. Colonel Rogers, directing your attention to the date of March 21, 1955, do you recall anything

(Testimony of George F. Rogers.)

that happened on that day in the vicinity of Pier 57?

A. Yes, sir.

Q. State what you observed. [6]

A. The Princess ship busted our cable.

The Court: When did that happen?

A. On the——

Mr. Morrow: I object. I object and move that the answer be stricken as not responsive.

The Court: Read the question.

Mr. Morrow: He couldn't see whether the Princess ship busted the cable, it was in 180 feet of water.

The Court: That is sufficient. Read the question.

(The reporter read the last question.)

The Court: That objection is overruled.

Q. (By Mr. Broz): Now, Colonel Rogers——

The Court: That date was what, please?

A. March 21st, sir.

The Court: You may proceed.

Q. (By Mr. Broz): Colonel, will you state what you observed which led you to the conclusion which you have just stated?

A. Oh, I could see out of the window in our office that this Princess ship was having trouble docking.

Q. Where was your office?

A. My office was in the fifth floor of the Federal Office Building down on First Street. [7]

Q. Could you see from your office window the area surrounding Pier 57 in Seattle harbor?

A. Yes, sir.

(Testimony of George F. Rogers.)

Q. What did you observe?

A. This Princess ship was having difficulty docking at the CPR dock.

Q. Did you see the——

The Court: Wait just a minute. Do not interrupt him. I want him to answer the question and everything that is responsive to this. Read the last question, because the answer was previously objected to and the Court has made a ruling, but the subject remains before the Court and if it is not proper when we get through the Court is going to sustain the objection.

(The reporter read the last question.)

The Court: Now if you know what you observed I want you to state exactly what you saw with your eyes.

A. There was a heavy wind blowing. There was a considerable amount of whitecaps on the bay. The Princess ship was having difficulty docking. I was watching from the window. She backed out down towards over our cable area and she had an anchor dragging at that time.

The Court: Pardon?

A. She had the anchor, the anchor was [8] dragging at that time. That's the end of what I observed.

Q. (By Mr. Broz): Where did you first——

Mr. Morrow: I'm sorry, I didn't get part of the answer.

The Court: Read the answer, Mr. Reporter.

(The reporter read the last two answers.)

(Testimony of George F. Rogers.)

The Court: Now wait just a moment. The Court's ruling previously announced on the objection to his previous statement that this vessel, the Princess Louise, busted the cable, is withdrawn. That objection is sustained. The Court will disregard that part of his statement.

Q. (By Mr. Broz): Colonel, where was the Canadian Pacific ship which you observed on March 21, 1955, when you first noticed her?

A. Just off the CPR dock. She was part—she overhung the dock somewhat.

Q. Do you know which pier that is?

A. That's the Canadian Pacific dock.

Q. Do you know the number of the pier?

A. I believe it's Pier 67. I'm not sure about that.

Q. What time of the day did you observe this?

A. This was around 3:00 o'clock in the afternoon.

The Court: Do you know at the foot of what [9] street the dock is? If so, state the name of the street.

A. No, sir, I do not. I could see it plainly from my room.

The Court: How long have you been stationed in your present work in Seattle?

A. I left Seattle in 1955, sir.

The Court: And when did you come back again at any time? Have you worked here any more?

A. No, sir.

The Court: You may inquire.

(Testimony of George F. Rogers.)

Q. (By Mr. Broz): Did the Princess ship subsequently move towards the vicinity of Pier 57?

A. Yes, sir, she did.

Q. Do you know where Pier 57 is in Seattle?

A. Yes, sir.

Q. Do you know at the foot of which street Pier 57 is?

A. No. It's just down to the right of Ivar's Restaurant down there.

Q. How far away was Pier 57 from your office building?

A. About three hundred yards.

Q. Did you observe the Canadian Pacific vessel enter into the cable area off Pier 57?

A. Yes, sir. She backed into it.

Q. Can you state how far off Pier 57 the Canadian Pacific [10] vessel was when you observed her?

A. About two lengths, two ship lengths.

Q. Is that to the best of your recollection?

A. Two to three. That's the best of my recollection.

Q. To the best of your recollection would you say that it was six hundred feet?

A. Yes, six hundred feet is right.

The Court: How far in yards would you estimate the vessel was in that docking maneuver from the location of your desk or position in your office?

A. Six hundred yards.

The Court: How many feet is that, 1800 or thereabouts?



(Testimony of George F. Rogers.)

A. 18—my mathematics may be wrong here, your Honor.

The Court: In what building or pier was your office?

A. My office was on the fifth floor of the Federal Building.

The Court: The Federal Office Building at the foot of Madison Street and First Avenue?

A. Yes, sir.

The Court: And this pier was the same Canadian Pacific pier that is now in use, is it?

A. Yes, sir, but we're talking now about [11] Pier 57, where the ship come down over our area.

The Court: I am talking about the entrance to the slip and to the docking activity, the location of the docking activity of the vessel where the Canadian Pacific's dock now is. Is that what you are talking about?

A. No, sir. Counsel asked me how far the ship was off of Pier 57.

The Court: Very well. How far was it off Pier 57; then, if you know where Pier 57 was and know that distance?

A. It was about two ship lengths off of Pier 57.

The Court: What is Pier 57? Is that the location of your office?

A. Pier 57 is the pier that our cable comes in at.

The Court: But where is your office?

A. My office was in the Federal Office Building.

The Court: And how far is it from the place

(Testimony of George F. Rogers.)

where you observed this vessel docking and having trouble in connection with its docking operations on March 21, 1955?

A. Well, their trouble started down at the [12] Canadian pier.

The Court: No, I want to know how far your office is from that place, or was. Is that the place you referred to as about 600 yards?

A. I would put the ship as about 600 yards off from my office after it got into the cable area.

The Court: That is sufficient. You may proceed.

Q. (By Mr. Broz): Did you observe the position of the anchor when the ship was off Pier 57?

A. Yes, sir.

Q. What was the position of the anchor?

A. It was stretched out, the anchor was in the water and the anchor chain stretched out.

Q. Towards which direction?

A. The chain toward—the anchor towards shore, stretched towards the bay.

Q. What happened after you observed this?

A. I called our engineer department and told them to be prepared to repair the cable, that there was a ship in over it with her anchor dragging and they could expect trouble momentarily. I called our traffic department and told them that they could expect to have the cable interrupted momentarily and to make some arrangements to get some other line in place of it. [13]

Q. Did you ascertain later whether or not in fact the cable had been broken?

(Testimony of George F. Rogers.)

A. It was reported to me later that the cable was broken and interrupted.

Q. When did you receive that report?

A. Well, this was before I went home. We quit at 5:00 o'clock. Prior to going home I was informed of this.

Q. Did you observe any other vessels in the cable area during the period when you observed the Canadian Pacific vessel attempting to dock?

A. No, sir, I did not.

Q. Did you observe a tug alongside the cable?

A. There was a tug there working with the vessel.

Q. Did you observe any other vessels in that area?

A. No, sir, I did not, not to my recollection. I don't recall any.

Mr. Broz: You may cross examine.

### Cross Examination

Q. (By Mr. Morrow): Colonel Rogers, how long have you been with the United States Army?

A. Since April, 1932—'42.

Q. Did you go to West Point?

A. Yes, I did. [14]

Q. What was your class?

(Witness refers to a paper.)

The Court: Read the question, Mr. Reporter.

(The reporter read the last question.)

A. Class of 1930.

(Testimony of George F. Rogers.)

Q. (By Mr. Morrow): When were you promoted to full colonel?

A. When I was here in Seattle in September of —not in September, in '54.

Q. So you were a full colonel when this cable break occurred on March 21, 1955, were you?

A. Yes, sir.

Q. Now, in your experience in the Army have you had any particular experience which makes you a good judge of distances?

A. I spent several years in the Field Artillery of the National Guard, and we had to judge distance there.

Q. You used instruments on those occasions, though, didn't you?

A. We used instruments and also your head.

Q. So you are specially qualified in making observations as to distances, are you?

A. No, I wouldn't say specially qualified.

Q. Now, the Federal Office Building is located on First Avenue, is it not?

A. Yes, sir. [15]

Q. Between Marion and Madison Streets?

A. Madison and Monroe, isn't it?

Q. How long have you been in the office down there?

A. Well, I came to town—you mean this last time?

Q. Yes.

A. I came to town last week, last Wednesday.

Q. Your office faces Monroe, does it?

(Testimony of George F. Rogers.)

A. No, the office I was in at that time faced Elliott Bay.

Q. It faced Elliott Bay? A. Yes, sir.

Q. Well, now, do you say that the Federal Office Building was between Marion and Monroe? Is that your recollection?

A. No, you said Marion and——

Q. I said Marion and Madison and you said no, Monroe and Madison.

A. I said I thought it was Madison and Monroe.

Q. Well, it is Madison. Now, what is the next street north of Madison on First Avenue?

A. I don't know.

Q. Isn't that Spring Street?

A. I don't know.

Q. Well, what is the second block north of Madison?

The Court: The street going alongside the north side of it?

Mr. Morrow: Yes, your Honor. [16]

A. The order in which these streets run from Madison north I do not know. The last time I was here was '55.

Q. (By Mr. Morrow): Well, how many city blocks are there between your office at the Federal Office Building and say Pier 64?

A. Is there another name for Pier 64?

Q. Pardon me?

A. What's the other name for Pier 64?

Q. The Lenora Street Dock, have you ever

(Testimony of George F. Rogers.)

heard it called the Lenora Street or the Canadian Pacific Dock?

A. The Canadian Pacific Dock, yes, I know.

Q. Yes. Well, how many blocks are there between your office we'll say and the Canadian Pacific Dock?      A. I'd say about four blocks.

Q. About four blocks. Now, you said you were a good judge of distance. What is——

A. No, I didn't.

Q. Pardon me?

A. No, I didn't.

Q. Well, we'll strike that, then. We'll strike what I said. What was your estimate of the distance between your office in the Federal Office Building and the Canadian Pacific Dock?

A. Oh, I'd say approximately 500 yards, 400 yards.

Q. 400 yards. That would be 1200 feet, wouldn't it? [17]      A. That's right.

Q. Now, what is your estimate of the distance between your office——

A. This would be—let me—this would be a farther distance than four—that's a short distance, I think, 400 yards. It's a greater distance than that to the CPR dock.

Q. You say it is a greater distance?

A. Yes.

Q. Well, now, you were talking about——

A. We can determine that off of a chart with no trouble at all.

Q. We're talking about your observations. I



(Testimony of George F. Rogers.)

understand your testimony was that you could see the Canadian Pacific dock and the difficulties the Princess Louise was having getting in there on the 21st. Now, what is your estimate of the distance between your office at the Federal Office Building and the Canadian Pacific dock? You have said 400 once. Now do you——

A. Well, but I corrected it and said that it was a greater distance than that.

Q. Now, according to your observation only at that time what would you estimate the distance to be?

A. Now I'm strictly guessing. To estimate a distance you must be able to look at the distance, which I can't do [18] at this time, but I would say it's approximately about 600 yards.

Q. 600 yards or 1800 feet?

A. And this is strictly a guess from memory.

Q. Well, now, what is your estimate of the distance between your office in the Federal Office Building as you saw it at that time and Pier 57 where you said you saw the Princess Louise?

A. About 300 yards.

Q. That would be about 900 feet, is that correct?

A. (Witness nods his head.)

Q. Now, is that strictly a guess, too, the same as your testimony in respect to the CPR dock?

A. Yes, talking from memory that's my opinion, it's about that far out there.

Q. Well, is that just a guess?

A. Yes, an estimate, a guess.

(Testimony of George F. Rogers.)

Q. All right. Now, you said I believe in your testimony on direct that you observed the Princess Louise approximately two or three ship lengths or approximately 600 feet off the end of Pier 57. Am I correct in restating your testimony?

A. I believe I said she come back from her own pier about two ship lengths, didn't I?

Q. Well, all right—— [19]

A. Two or three, I said.

Q. Is it your testimony then that when the Princess Louise was docking and attempting to make her first landing that she backed down to Pier 57 and passed over the cable area, the marked cable area at Pier 57? Is that what you observed?

A. I observed the Princess Louise leave her dock and come back over our cable area.

Q. Yes. Well, she backed up two ship lengths, is that your testimony?

A. I said she was approximately two or three ship lengths from her dock back into our area, yes.

Q. Well, how far did you observe the Princess Louise back up?

A. I don't know how far she backed up. I can tell you this: She backed up into our area.

Q. Well, you observed her, you say?

A. At that time I knew where our area was. I was—this window looked down there. I'd been here a long time and I knew where our cables run.

Q. Well, I understand that, but on direct examination you were stating what your observations were and that's all I want, Colonel.

(Testimony of George F. Rogers.)

A. Well, my observations were that she backed back and hooked our cable. [20]

Q. Now, how far did she back?

A. She backed back into our cable area.

Q. Well, in terms of yards or feet?

A. The exact distance she backed in yards or feet I would be unable to tell you.

Q. At one time you indicated it was two ship lengths. Is that your best estimate?

A. I said she came back two to three ship lengths.

Q. Two or three ship lengths?

A. That puts her back in—back over in our area.

Q. I see. Now, when you first observed the Princess Louise backing—

The Court: At this time we will take a short recess, about ten minutes.

(Short recess.)

The Court: You may proceed. All are present.

Q. (By Mr. Morrow): Where was the Princess Louise, Colonel Rogers, when you first observed her starting to back?

A. Down next to her own dock, the CPR dock.

Q. I see. Now, what was the fore and aft line of the ship in respect to her own dock when you observed the Princess Louise start to back?

A. I haven't the least idea.

Q. As a matter of fact didn't you see the broad-side of the ship from the angle you observed her from your office in [21] the Federal Office Building?

(Testimony of George F. Rogers.)

A. From the office you don't get a full broadside, you get somewhat of an angle. You don't get a broadside of the ship until she comes out and turns.

Q. Your testimony is you can't tell us what angle you saw the ship at?

A. I saw her first relatively parallel to her dock, then she backed up and swung over over our area.

Q. She backed in what direction, would you say?

A. Generally towards West Seattle.

Q. Would that be southerly?

A. That would be southwest.

Q. Southwest?           A. Or south-southwest.

Q. Now, what else did you observe? Did you observe anything else?

A. She eventually got docked.

Q. What was the Princess Louise doing at the time when you saw that her anchor was dragging? Was she backing?           A. Yes.

Q. Now, if I understand your testimony, you concluded that the anchor of the Princess Louise had fouled the Fort Lawton-Seattle cable. Is that correct?           A. That is correct.

Q. And is it also correct that at that time she was backing? [22]

A. I don't know whether she fouled the anchor backing or going ahead. My conclusion was that we had a cable in that area and we had a ship over it with the anchor out and this means trouble.

(Testimony of George F. Rogers.)

Now, I don't know whether she caught it going forward or back.

Q. Well, your testimony, if I have made my notes correctly, was this, and I would like to ask you a question about it: She backed down over the cable area and had her anchor dragging at that time?

A. That's correct.

Q. Is that correct?

A. That's correct.

Q. It was then that you concluded, was it not, that there was a possibility of trouble with the Seattle-Fort Lawton cable?

A. That is correct.

Q. Now, what anchor did you observe?

A. Well, so there'll be no doubt of it I'll say the right anchor looking forward. I think that's the starboard anchor.

The Court: Was it the forward——

A. The forward anchor on the right-hand side.

The Court: The forward anchor, not the stern anchor, is that correct?

A. That's my opinion from my recollection. [23]

Q. (By Mr. Morrow): Did the Princess Louise have any assistance in docking?

A. There was a tug. A tug come up and assisted her to come into the dock, yes, sir.

Q. And where was the Princess Louise when the tug put a line aboard the Princess Louise?

A. I don't recall if the tug put a line aboard her or pushed her.

Q. What was the position of the tug in respect



(Testimony of George F. Rogers.)

to the Princess Louise when you observed the tug and the Princess Louise?

A. I don't recall what the position of the tug was. The tug's position changes when they're moving ships.

Q. Would you just describe now again everything you observed, particularly in respect to the course that the Princess Louise took until she docked while she was under your observation?

A. The Princess Louise when I first saw her was up at the CPR dock attempting to dock and in my opinion she was in trouble, and she come and moved back over our cable area. She got the assistance of a tug and come back up and docked.

Q. Now, how far west did the Princess Louise go from the end of Pier 57?

A. By inches or feet or yards I would be unable to tell you. [24] She was over our cable area.

Q. All right. How far off Pier 57 did you observe the Princess Louise, the furthest position off?

A. Any figure I give you of this would be meaningless because I would just be guessing. She was off the end of the pier close enough where I could see her very plainly.

Q. You can't state the distance the Princess Louise was off Pier 57, can you?

A. This many years after I saw her out there, it would be ridiculous for me to try to say exactly how far she was off the pier. It would be just a guess and not even an educated guess.

Q. Can you state how far the Princess Louise



(Testimony of George F. Rogers.)

was off from the sea wall at the foot of University Street?

A. I can't see the sea wall from my window, I don't believe. All you can see is the top of the piers and the docks along there.

Q. At the time in question, Colonel Rogers, where were the marks of the cable area on the chart? A. On the chart?

Q. Yes.

A. They're drawn in red ink out into the area. There's a rectangular square or rectangular figure drawn out there that's the cable area. [25]

Q. How far out from the sea wall at the foot of University Street does the marked area go?

A. I don't know.

Q. Or did it go? A. I don't know.

Q. You don't know? A. No.

Q. Did you know at that time how far the marked area extended from the sea wall?

A. I don't pay any attention to charts. I know how far out in the bay it runs. I could go up in the window and it goes out so far off of the pier.

Q. How far out from the sea wall did the Fort Lawton cable extend in a generally westerly direction on the 21st of March, 1955?

A. The exact location of the cable, this I couldn't tell you. Captain Bowen can tell you. I know generally where it runs.

Q. Well, I understood you to say, Colonel Rogers, that you knew how far out it ran.

A. I know the general route the cable takes, I

(Testimony of George F. Rogers.)

know the general area, and this ship was in our area.

Q. Did you assume at that time, Colonel Rogers, that the Fort Lawton-Seattle cable extended out more or less in line with Pier 57? That would be perpendicular to the sea wall. [26]

A. Now this I couldn't answer. The cable runs down alongside the pier and swings out towards Fort Lawton. Now, when you start talking perpendicular to sea walls or not, I can't answer that.

Q. What you referred to when you referred to the ship dragging the cable was the actual cable area marked on the chart, was it not?

A. No, I was referring to the area out off of the pier that our cable run in. Now, there's an area out there and it's marked on the chart also. The actual coordinates on the chart, I don't know what they are, but there's an area off of the pier that our cable runs through.

Q. Well, there is a northerly boundary of the marked cable area, is there not?

A. Yes, there is, and it's marked on the chart.

Q. Now, where is that northerly boundary in respect to Pier 57, if you know?

A. The north boundary. Well, I'm trying to get straight on what's north and south, because things sometimes are catty corner. Do you mean the right-hand boundary? Are you talking about the north boundary, the right-hand boundary or the in boundary?

Mr. Broz: Your Honor, I wish to object. [27]

(Testimony of George F. Rogers.)

The examination is beyond the scope of the direct examination.

The Court: The objection is overruled.

A. I can show you on the chart where the cable area is.

Q. (By Mr. Morrow): Colonel Rogers,—

A. O. K.

Q. Are you unfamiliar with the north, west, east, south directions in respect to this area?

A. I know generally north, south, east and west, but you get into individual piers and you get things on a curve and they sit catty corner. Now, I can tell you which is the right boundary and the left boundary of the cable area, and it goes straight out. Now, Pier 57 runs generally towards West Seattle. It's in a westerly direction. Then the north would be on the right and the south would be on the left.

Mr. Morrow: I have no further questions.

The Court: Anything further?

### Redirect Examination

Q. (By Mr. Broz): Colonel Rogers, you stated on cross examination that you attended West Point? A. That is correct.

Q. How long were you at West Point? [28]

A. One year, sir.

Q. You did not graduate from West Point?

A. No, sir.

Q. When and where did you get your commission?

(Testimony of George F. Rogers.)

A. I was commissioned in the National Guard, then when war was declared I was commissioned and after the war I was given a regular Army commission.

Q. How long has it been since you have been stationed in Seattle?

A. I left here September, 1955.

Q. On what side of the Federal Office Building is your office?

A. On the side towards Elliott Bay.

Q. That's the——

A. That would be the northwest corner.

Q. That was where your office was in 1955?

A. That's correct.

Q. Is this the office from which you observed the occurrence which you have testified to?

A. That's correct.

Q. Did you have a clear view of the area off Pier 57?

A. A clear, unrestricted view.

Q. Did you have a clear view of the area off Pier 64?

A. Yes.

Q. Can you estimate—— [29]

A. There's two windows involved here. You look at 64 out of one window and 57 out the other.

Q. Can you estimate how far off Pier 57 the Canadian Pacific vessel was in terms of ship lengths?

A. Well, distances over this time is strictly a guess. I would say, though, that two to three ship lengths she was out there.

(Testimony of George F. Rogers.)

Q. Would you say that she was any further out than three ship lengths?

A. I don't think so, because she looked awful close.

Q. This is to the best of your recollection?

A. That's to the best of my knowledge.

Q. Do you recall any of the details of the maneuvering of the vessel at the time that you observed her?

A. Well, I didn't watch her continuous. I'd look at her and go back to work and look some more.

Q. Would it be correct to say that your recollection is only a general recollection?

A. Well, I'll say this: As far as the fact that she tried to dock and didn't make it and was in trouble and come back over our area and then come up and docked, that's not general, that's an absolute fact.

Mr. Broz: I have no further questions. [30]

### Recross Examination

Q. (By Mr. Morrow): Colonel Rogers, you have a distinct recollection of making the observations which you have just testified to, would you say?

A. This is correct.

Q. What is your estimate of the length of the Princess Louise?

A. The captain said three hundred and some feet.

Q. Well, I know he said that, but what is your recollection?

(Testimony of George F. Rogers.)

A. Well, that would be my recollection.

Q. That's your recollection. Well, now, when you referred to ship lengths in giving the distance off the piers did you have in mind the captain's testimony of 307 feet?

A. When I said ship lengths I had in mind the length of the Princess herself. Now, again with a ship moving on the water there and I'm not a seafaring man, it's pretty hard to recollect that, but as I recall it she moved back about three lengths.

Q. That was back?

A. From off the end of the pier, that was the distance.

Q. Colonel Rogers, you seem to have a most distinct recollection of this backing operation. How long in terms of minutes did you keep the Princess Louise under observation? [31]

A. Oh, I don't know, I'd guess that it was about maybe between a half hour and an hour.

Q. Between a half hour and an hour?

A. Now this is strictly a guess. I'd say between a half hour and one hour.

Q. Now you're referring to——

A. From the first time I saw her until she got tied up.

Q. Yes, but that wasn't quite the question, Colonel Rogers. The question is how many minutes did you keep the Princess Louise under observation during this half hour to an hour?

A. I haven't the least idea. I'd look out one



(Testimony of George F. Rogers.)

window and go back to work, look out the other window and go back to work.

Q. So you didn't keep her under constant observation?      A. No, sir.

Q. Did you continue to perform the duties in your office in respect to your work at the same time that this docking operation was going on?

A. I did.

Q. So you only saw the Princess Louise at moments and then you would go back to your work and then come back and look at it again, would you?

A. However, the most of the time during that time I would watch her because it was interesting to watch. [32]

Q. I see. Well, now, if it took approximately an hour to dock, were you at the window watching her most of the time during that hour?

A. There are two windows involved. I'd have to walk into one room to see the CPR dock, the other window I could see right from my desk.

Q. And were you doing that all the time?

A. Yes.

Q. Going back and forth for an hour?

A. Yes, I did that because I'd take papers back and forth sometimes to talk to a person in that office, sometimes in the other.

Q. Well, I get the impression, Colonel Rogers, that you primarily kept at the work you were sup-

(Testimony of George F. Rogers.)

posed to be doing at that time and that you made casual observations of the Princess Louise's maneuvers. Is that correct?

A. Well, I think you have maybe the wrong impression, because my work is strictly supervisory, I don't have a lot of papers to shuffle, and I spent a good time watching the ship. It was something interesting to watch. I didn't have a great deal to do as far as shuffling papers is concerned at that time.

Mr. Morrow: That's all. [33]

### Redirect Examination

Q. (By Mr. Broz): Colonel, were you concerned with the cable?

A. I was considerably concerned with the cable, because that took care of our lines out to Lawton, and if we lost the cable we're going to be in trouble, and at this time this is of a primary interest.

Mr. Broz: That's all.

The Court: Did you intend to say that from the time you saw the ship in what you have said was in trouble in docking about an hour elapsed before her docking operation was completed?

A. Well, your Honor, as I told Mr. Morrow, I was strictly guessing. He asked how long and I said between a half hour and an hour.

The Court: You may proceed.

Mr. Broz: I have no further questions.

Mr. Morrow: I have one or two questions.

(Testimony of George F. Rogers.)

### Recross Examination

Q. (By Mr. Morrow): Colonel Rogers, you indicated that you were concerned about damage to the Fort Lawton cable on this occasion. Did you notify the cable ship? A. No, sir. [34]

Q. Well, that would normally have been your duty, wouldn't it? A. No, it was not.

Q. Whose duty would that be?

A. That would be in the plant department, Lieutenant Colonel Bingle or some of his people.

Q. Did you alert the plant department?

A. I did.

Q. Do you know what they did?

A. They would—I presume at that time they would get ahold of Captain Bowen and alert him to the possible need for the vessel. They then in conjunction with the traffic department would determine what we were going to do if we lost the cable to back it up, and they would then start getting ready to either repair it or enter into a decision not to repair it.

Mr. Morrow: That's all.

### Redirect Examination

Q. (By Mr. Broz): Colonel, will you explain what you mean by "back up"?

A. Well, this cable carried the circuits from the Federal Building up to the Fort Lawton transmitters. If the cable is interrupted, then we have to put some type of communication up to substitute

(Testimony of George F. Rogers.)

for it, and this we took [35] care of by leased lines from the P T & T Telephone Company.

Mr. Broz: No further questions.

The Court: Step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Mikkelborg: The libelant will call Master Sergeant Archie Zehe.

The Court: Come forward and be sworn as a witness.

### ARCHIE ZEHE

called as a witness in behalf of libelant, being first duly sworn, was examined and testified as follows:

The Court: Your last name is what?

A. Zehe.

The Court: How do you spell it?

A. Z-e-h-e.

The Court: And it is Sergeant, is it?

A. Master Sergeant.

The Court: You may inquire.

### Direct Examination

Q. (By Mr. Mikkelborg): Sergeant, would you speak loud enough so that you can [36] easily be heard and state your address?

A. My address presently is Box 496, Kodiak, Alaska.

The Clerk: Can I have his name, please?

Q. (By Mr. Mikkelborg): Will you spell your name

(Testimony of Archie Zehe.)

The Court: Master Sergeant Zehe, Z-e-h-e, and Archie is spelled A-r-c-h-i-e, is it?

A. Yes, sir.

The Court: You may proceed.

Q. (By Mr. Mikkelborg): Would you state your present occupation, Sergeant?

A. Station commander, United States Army, Alaska Communication System station, Kodiak, Alaska.

Q. How long have you held that position?

A. I've held this position since June 4, 1957.

Q. And what position did you hold prior to that position?

A. Noncommissioned officer in charge of the traffic section.

Q. At what place?

A. At Kodiak, Alaska, the same station.

Q. Is that the Alaska Communication System station? A. Yes.

The Court: What do you call that assignment? Will you just state it again, the nature of your job, the classification of your job? You are now in charge of what or you now are what?

A. I am now the station commander of the [37] U. S. Army Alaska Communication System station, Kodiak.

The Court: You may proceed.

Q. (By Mr. Mikkelborg): And your former position at that same station was——

A. Noncommissioned officer in charge of the traffic section.

(Testimony of Archie Zehe.)

Q. How long did you hold that position, Sergeant?

A. From October, 1951, up to June 4, 1957.

Q. Would you describe the duties of your position as the noncommissioned officer in charge of the traffic section for the Kodiak Alaska Communication's station?

A. My duties at that time in that job were overall supervision of all operational personnel and circuits, maintaining and proper supervision of station logs to ascertain that all interruptions, anything peculiar to communications and traffic would be entered in the log at that time. I made not less than hourly checks to ascertain that communications were intact and traffic was moving.

Q. Would you describe the duties of your now position as station commander of the Alaska Communication System station at Kodiak?

A. My duties now are overall supervision and administration of the station, which includes all phases.

Q. What were your duties in March of 1955?

A. NCOIC the traffic section. [38]

The Court: Wait just a minute. Spell out the names of those abbreviations.

A. Excuse me, sir. Noncommissioned officer in charge of the traffic section.

Q. (By Mr. Mikkelsen): And you have described those duties, have you not?

A. Yes, sir.



(Testimony of Archie Zehe.)

Q. At my request did you bring with you the station log?      A. Yes, sir, I did.

Mr. Mikkelborg: I ask that the log which the witness has be marked as Libelant's Exhibit 1 for identification.

The Clerk: Libelant's Exhibit 1.

The Witness: I'm unable to surrender these documents, sir. Only the Secretary of the Army can surrender them. I'm custodian of them.

Q. (By Mr. Mikkelborg): Do you have with you the original log?

A. Yes, sir, I do.

Q. Do you have with you a copy of that log?

A. I have copies of them, sir.

Mr. Mikkelborg: If the Court please, we ask that after examination by Counsel a copy may be substituted for the original to permit this officer to return the original back. [39]

The Court: Let the copy be marked Libelant's Exhibit 1 and let the original with the copy be shown to opposing Counsel after I have seen it.

(Copy of Alaska Communication System Kodiak station log was marked Libelant's Exhibit No. 1 for identification.)

Q. (By Mr. Mikkelborg): Will you please examine what has now been marked for identification as Libelant's Exhibit 1. Do you recognize that?

A. Yes, sir.

Q. What is it?

A. It is an exact true copy of the original sta-

(Testimony of Archie Zehe.)

tion log of the Kodiak radiotelephone section, Kodiak, Alaska, the ACS station.

Q. Does that record cover the month of March, 1955? A. Yes, sir, it does.

Q. Is that a record of the Alaska Communication System or is that a personal record, Sergeant?

A. That is an official document, record of the Alaska Communication System station, Kodiak, Alaska.

Q. Is that the type of record which the Alaska Communication System station under your command in Kodiak is required to keep in the regular course of the business of that particular station?

A. Yes, sir, it was then and is now. [40]

Q. Was that particular record kept in the regular course of the business of the Kodiak ACS station? A. Yes, sir, it was.

Q. Where did that record come from before its appearance here, if you know?

A. I brought that record with me from Kodiak, Alaska, this Sunday from the station files of Kodiak, Alaska, which I am custodian of. I am——

Mr. Morrow: I have no objection to the authenticity or the substitution of the copy for the original.

The Court: I understand it was admitted in the pretrial order, was it not?

Mr. Morrow: No, your Honor. I had not previously seen it.

The Court: It is not one of those marked for identification?

(Testimony of Archie Zehe.)

Mr. Morrow: No, your Honor.

The Court: Then he having no objection do you wish to offer it?

Mr. Mikkelborg: I wish to offer it, your Honor.

The Court: Do you have any objection to using the copy?

Mr. Morrow: I reserve the objection as to the materiality. I only admit the authenticity. [41]

The Court: I understand so. Have you any objection to the fact of its being a copy instead of the original?

Mr. Morrow: No.

The Court: And on what issue do you offer this?

Mr. Mikkelborg: We offer this exhibit, your Honor, in connection with the establishment through this witness and that record kept by him of the interruption in service of the cable facility between Seattle and Kodiak.

The Court: It has not been shown that it has anything to do with that kind of a record. At least it has not been sufficiently shown against the objection.

Mr. Mikkelborg: The witness testified in connection with the description of it that it is a record kept of all the traffic which he receives at that station from Seattle showing entries per hour or by the hour.

The Court: You ought to ask him concerning the subject matter including the subject matter of this litigation as to the contents and nature of the contents of the exhibit.

(Testimony of Archie Zehe.)

Q. (By Mr. Mikkeltorg): Sergeant, directing your——

Mr. Mikkeltorg: I understand this has not [42] been admitted. It that correct?

The Court: It has not been admitted, and what the Court is directing your attention to is that you now have the opportunity of showing that the nature of the contents on a certain day or certain days of this record pertain to subjects of this litigation's inquiry.

Q. (By Mr. Mikkeltorg): Sergeant, from your familiarity——

The Court: Without telling him what the specific entry is.

Q. (By Mr. Mikkeltorg): Sergeant, does this record cover the date of March 21, 1955?

A. This record covers the date of March 21, 1955, of the radiotelephone communications between the U. S. Army Alaska Communication System station, Seattle, Washington, and the U. S. Army Alaska Communication, Kodiak, Alaska.

Q. Does it in a general nature show whether or not there were any communications——

The Court: Regarding what subjects of communication. That would be one way of asking him, regarding what subjects of communication on that date, March 21, 1955.

Q. (By Mr. Mikkeltorg): Regarding what subjects, Sergeant, of communications on that date does this record contain any information?

A. By "subjects" I presume you mean the cir-

(Testimony of Archie Zehe.)

uits and the [43] circuit that this document covers the operational——

The Court: I do not think so. I do not think that is what he is inquiring about. At least that is not what the Court is interested in. The question is, what are the subjects of the various communications, if any, you had on that day between your Kodiak office as reflected by this exhibit and the Seattle office of the Communication System.

A. Well,——

The Court: That is the nature of the inquiry.

A. It will indicate that I had an interruption in service on March 21st at approximately 4:00 p.m. Seattle time, at 4:00 p.m. Seattle time.

Q. (By Mr. Mikkelborg): Does it contain entries concerning the traffic handled between your station and Seattle during the day of March 21st?

A. Yes, sir, it will, it does.

Q. Does it show the general nature or the type of communications that were held, their frequency, and items such as that?

A. Yes, sir, it will.

Mr. Mikkelborg: I think that should establish a sufficient foundation to offer Libelant's Exhibit 1.

Mr. Morrow: I object to the materiality and relevancy on the basis that it isn't shown that this [44] log is either material or relevant as showing a time when the Seattle-Fort Lawton cable went out. Obviously there are many different connections, I would assume, between Fort Lawton and Kodiak, Alaska.



(Testimony of Archie Zehe.)

The Court: With respect to the time element what is there material about this exhibit according to the contention of the one offering it?

Mr. Mikkelborg: With respect to the time element the contention of the libelant, as I believe is borne out by the testimony of this witness, is that this record will show regular entries to the effect that traffic communications by the radiotelephone system were had between the station commanded by this officer and the Seattle station and will show the times of those communications and will show the interruption of those communications.

The Court: You mean will show the time when it was interrupted?

Mr. Mikkelborg: Yes, your Honor.

The Court: Do you seek by this document or some other evidence to tie that up as a material fact in this litigation?

Mr. Mikkelborg: We seek to show by this document that the interruption of the facility—first that the facility was in use and that the interruption [45] coincides with the time in which the Princess Louise was maneuvering over the cable area.

The Court: Is it charged that this took place at a particular time so far as the libel is concerned, or as far as the contentions of the libelant are concerned in this pretrial order?

Mr. Mikkelborg: The pretrial order could only—agreement on the pretrial order could only be reached as to the day.

The Court: It supersedes the pleadings; I take



(Testimony of Archie Zehe.)

occasion to remind you of that. We have no pleadings in the case, we have the pretrial order. What is there in the pretrial order that makes this material as to time?

Mr. Mikkelsen: The pretrial order specifies, or it is agreed in the pretrial order that the break in the Seattle-Fort Lawton cable occurred during the week of March 20th. That was as close as Counsel could agree. The evidence will show the exact time of the break.

The Court: Will you seek to show from this document the failure of this system or this cable somewhere on the line during that week?

Mr. Mikkelsen: Yes, your Honor.

The Court: And specifically when it was?

Mr. Mikkelsen: Yes, your Honor.

The Court: The objection is overruled. [46] As a little bit, I suppose, of the caution that a trial judge feels he must take, in the past I have always been reluctant after about the first half dozen trials we conducted to excuse witnesses until the trial is over because so many times either Counsel may wish to call one, and here again I have been reluctant in my experience with the pretrial procedure to let the order be approved with in it a statement that it entirely supersedes the pleadings, and here is a good example. I assume you have in the original pleading an allegation that is reasonably definite and certain as to the time when this cable failed. Now you have instead of that, if you had anything of that sort, a very unhelpful con-

(Testimony of Archie Zehe.)

tention or statement that the cable failure occurred during one week in 1955.

Mr. Mikkeltorg: That is true, your Honor.

The Court: You might prove it occurred in one week and you still would not have proved anything definite.

Mr. Mikkeltorg: That is true, your Honor.

The Court: You may proceed.

Q. (By Mr. Mikkeltorg): Sergeant, directing your attention to the Alaska Communication System station at Kodiak log entry for March 21st in terms of Kodiak local time, what does the record show with relation to that date, [47] if anything?

A. Do you want Kodiak local time instead of Seattle time?

Q. The afternoon of the 21st of March, Kodiak local time.

The Court: The Court has not admitted the document in evidence, the Court has merely ruled on the objection.

Mr. Mikkeltorg: If the Court please, we wish to offer this exhibit in evidence. I thought I had offered it.

The Court: Is there a further objection?

Mr. Morrow: Yes, the same objection, your Honor. I think it isn't tied up yet.

The Court: The objection is overruled. This exhibit is now admitted, it being Libellant's Exhibit 1.

(Libellant's Exhibit No. 1 for identification was admitted in evidence.)

(Testimony of Archie Zehe.)

The Court: Counsel conducting the examination and being responsible for the offer and admission in evidence of exhibits should keep track of them and have in mind the state of the record respecting the admission or nonadmission of exhibits. Proceed.

Mr. Mikkelborg: Thank you, your Honor.

Q. (By Mr. Mikkelborg): Sergeant, directing your attention to the Alaska Communication System station, Kodiak, log book, does that record have any entries in terms of [48] Kodiak local time or Seattle local time for the afternoon of March 21, 1955?

A. The entries are in Greenwich mean time. Converted to Kodiak local time there are entries.

Q. Very well. How often are there entries made on that date?

A. Not less than once hourly.

Q. Are there any entries of March 21st relating to communications with the Alaska Communication System station in Seattle?

A. Yes, sir. At 12:00 noon Kodiak local time I——

Q. Sergeant, before you proceed any further, to clarify the matter of time, what time is 12:00 noon Kodiak local time in terms of Seattle time?

A. That would be 2:00 p.m. Seattle time. Kodiak is two hours behind Seattle.

Q. Very well. What entry is shown for that time in the ACS log for the Kodiak station?

A. The operator's initials who was on duty at that time, and her remarks that contact was made

(Testimony of Archie Zehe.)

with AAH, Seattle, on twelve and thirteen thousand kilocycles. The signals were good both ways and we were up to long distance for traffic.

The next entry at 1:00 p.m. Kodiak time, which is 3:00 p.m. Seattle time—— [49]

The Court: As soon as you can find a place to pause, will you do so?

A. Yes, sir.

The Court: Court is now at recess until 2:00 o'clock.

(Thereupon, at 12:15 o'clock p.m. a recess herein was taken until 2:00 o'clock p.m.)

Tuesday, August 19, 1958, 2:15 o'clock p.m.

(All parties present as before.)

The Court: You may resume the trial. Proceed. All are present.

### ARCHIE ZEHE

resumed the stand.

Direct Examination—(Continued)

Q. (By Mr. Mikkelsen): Sergeant, directing your attention to what has been marked Libellant's Exhibit 1 for identification, namely the Alaska Communication System station log for the Kodiak station, can you state whether or not the record shows any record of traffic with ACS Seattle for the date of March 21, 1955? [50]

A. Yes, sir, the log shows that traffic had been handled through the day.

Q. What does it show with respect to that traffic during the day?

(Testimony of Archie Zehe.)

A. It shows the traffic conditions, that the traffic was light. All entries as I had stated before.

Q. Is there any routine entry made at any particular time with relation to the traffic with Seattle?

A. At 3:00 p.m. Seattle time——

Q. Just a moment, Sergeant. Is there an entry for say beginning with noon regarding Seattle?

A. Yes, sir, beginning at noon.

Q. On what date?

A. On the 21st of March.

Q. What is that entry?

A. That—let's see, I've got to decipher it.

Q. How often were these entries made?

A. Every hour, so beginning at noon, which is 2000 Greenwich time, noon Seattle time, we show in the entry going ahead with AAH on twelve and thirteen thousand, signals were good both ways and traffic light.

Q. What is AAH, Sergeant?

A. AAH is the radio call signal, the radio call sign of the Alaska Communication System, Seattle, Washington.

Q. And what does the record show with respect to traffic? [51]

The Court: Is there any objection to his marking that place on the margin of that exhibit right opposite the beginning of that notation?

Mr. Mikkelsen: That's agreeable, your Honor.

(Witness marks on Libellant's Exhibit No. 1.)

The Court: You may proceed.



(Testimony of Archie Zehe.)

Mr. Mikkeltorg: I ask that the reporter read the portion of the——

The Court: That will be done.

(The reporter read the last question.)

Q. (By Mr. Mikkeltorg): And what hour was that entry made, Sergeant, in terms of Seattle time?

A. 12:00 noon.

Q. And did you make a mark at that position?

A. Yes, sir, I have.

Q. What is the next regular entry with respect to any traffic with ACS, Seattle?

A. The next entry would be at 1:00 p.m. Seattle time the log shows we cleared AAH on twelve and thirteen thousand, signals were fair to good all schedules, traffic was light.

Mr. Mikkeltorg: If the Court please, I ask that the witness be permitted to mark that rather than with just a check mark, but to mark it with the time in [52] terms of Seattle time.

The Court: Any objection from opposing Counsel?

Mr. Morrow: Well, I have no objection, but I do have this observation: The witness has indicated that 12:00 noon was Kodiak local time.

The Witness: No, sir.

The Court: No, he does not agree with that, Mr. Morrow. You said, "No, sir," in response to Mr. Morrow's remark? A. Yes, sir.

Mr. Morrow: Well, may I see the mark on his exhibit?



(Testimony of Archie Zehe.)

(Libelant's Exhibit No. 1 was handed to Mr. Morrow.)

Mr. Mikkelborg: If the Court please, I ask the Court's indulgence to excuse Mr. Broz for a few minutes to assemble the libelant's memorandum.

The Court: Mr. Broz may do that.

Mr. Broz: Thank you, your Honor.

(Libelant's Exhibit No. 1 was returned to the witness.)

The Court: Does that page have a number?

A. Yes, sir.

The Court: What is the number?

A. 79. [53]

The Court: So this marked margin calling attention to these two entries in this exhibit appear on that page just stated by you, is that right?

A. Yes, sir.

Q. (By Mr. Mikkelborg): What page was that, Sergeant?      A. Page 79.

Q. What does the next entry with respect to any traffic with Seattle show and at what time?

A. At 2:00 p.m. Seattle time we contacted AAH on twelve and thirteen thousand. Signals were good both ways, we were up to long distance for traffic.

Q. And will you mark that with the Seattle time opposite the Greenwich time in the margin, and would you state for the record what the Greenwich time is opposite the mark you are now making? Will you state what the Greenwich time opposite that mark is?

(Testimony of Archie Zehe.)

A. The Greenwich time shown opposite that mark, 2200 Zebra.

Q. Would you read the next——

The Court: What does that mean, 2200 Zebra?

A. Greenwich time.

The Court: What does "Zebra" mean?

A. That——

Mr. Mikkelborg: If the Court please, that is the military——

The Court: Just a minute. What does that mean? [54]

A. That is the symbol to indicate Greenwich time.

The Court: In other words, if you see the word "Zebra" you understand that refers to Greenwich time, is that what you mean?

A. Yes, sir, in communications I do, sir.

The Court: You may proceed.

Q. (By Mr. Mikkelborg): Would you read the next entry pertaining to Seattle and state at what hour it appears?

A. At 3:00 p.m. Seattle time the log shows clearing AAH twelve and thirteen thousand, signals good all schedules, traffic light.

Mr. Morrow: May the Court please, in order that I might follow this I wonder if he could refer to the entry in the exhibit first in respect to Greenwich time in order that I might identify it?

The Court: If that will help you, will you do that? A. Yes, sir.

The Court: The Court asks the witness to do so.

(Testimony of Archie Zehe.)

A. All right. Do you want the last one?

Q. (By Mr. Mikkeltborg): Would you state the Greenwich time symbol at that entry?

A. The symbol at that entry, 2300 Zebra. [55]

The Court: I am afraid you used a word that——

A. 2300 Greenwich.

The Court: No, no. Mr. Reporter, did you get down the first word of his last answer?

The Reporter: Yes, sir.

The Court: State it.

(The reporter read the answer as follows:

“A. The symbol at that entry, 2300 Zebra.”)

The Court: Proceed.

Q. (By Mr. Mikkeltborg): Now, Sergeant, what is the next scheduled contact with Seattle according to the record as you have it there following the contact at 3:00 p.m. Seattle time, which is listed there opposite 2300 Greenwich time? What is the next——

A. Is that the one you want, the one after, following?

Q. The next scheduled contact with Seattle.

A. It would be on Page 80.

Q. At what time was the next scheduled contact?

A. 0005 Greenwich, which is 4:05 p.m. Seattle time.

Q. What time was the next scheduled contact after 3:00 o'clock or the next regular entry would have been made if it were made at that time?

A. At 0001.

(Testimony of Archie Zehe.)

Q. Which in terms of Seattle time is what? [56]

A. It would have been 4:01 p.m.

Q. Does such an entry appear in the record?

A. No, sir, it does not.

Q. What is the next entry?

A. The next entry is at 0005 Greenwich, 4:05 p.m. Seattle time.

Q. What entry is made opposite that time?

A. The log shows that we have the AAH carrier on 13,000 but it doesn't sound as though he has cleared Adak yet.

Q. Would you explain what those symbols mean or what that language is intended to convey?

A. Yes, sir.

Q. In terms of your language used in that station and this record.

A. The radio portion of this circuit, which was from the Fort Lawton transmitter coming north to Alaska, was shared by Adak and Kodiak. On the even hour Kodiak had the circuit, on the odd hour Adak had the circuit, and this being the evening hour, the next entry, the operator could hear the carrier coming from the Fort Lawton transmitter and assumed that the circuit was sitting idle and that they hadn't cleared Adak yet.

Q. Before going any further, Sergeant, would you describe this circuit as it existed and as you used it between Alaska Communication System stations in Seattle and your Alaska [57] Communication System station in Kodiak?

A. Yes, sir. This is a wireless circuit between

(Testimony of Archie Zehe.)

Kodiak and the Fort Lawton transmitter station, which we had a transmitter there. Between——

The Court: Where? A. At Fort Lawton.

The Court: Where was it located?

A. At Fort Lawton, sir.

The Court: Was it up on top of the hill or was it down towards——

A. That I could not tell you, sir, because I've never been to the station. I know from circuit diagram and facilities charts that the equipment was there.

The Court: You may proceed.

A. And the portion between the Fort Lawton transmitter and the ACS in the Federal Building was by control lines in a submarine cable which was shown—to my knowledge was shown on a circuit diagram and facilities chart.

Q. (By Mr. Mikkelborg): The Federal Building where, Sergeant?

A. In Seattle, Washington, located on First Avenue between Marion and Madison.

Q. Does this record show any information with respect to the failure of the Seattle station to come in at 4:00 p.m. Seattle time? [58]

A. Yes, sir, there's a lack of an entry at 4:01 p.m., where Seattle would normally and invariably would contact us. They did not. At this time they hadn't made contact with us. All we could get was the radio signal from Fort Lawton.

Q. What is the next entry with respect to con-



(Testimony of Archie Zehe.)

tact with the Seattle ACS station by your Kodiak station?

A. At 0006 Greenwich, 4:06 p.m. Seattle, we advised AAH, which is ACS Seattle, via ALB, which is ACS Anchorage, we had a circuit across there, that when they were ready we would be on twelve and thirteen thousand.

Q. Well, what was the next entry in that connection?

A. At 0009 Greenwich, 4:09 p.m. Seattle, AAH—ACS Seattle—advised Kodiak via ALB—ACS Anchorage—that they have transmitter modulation trouble and to stand by. In other words, they weren't getting from the ACS in the Federal Building in Seattle to the Fort Lawton transmitter.

Q. How, if you know, was ALB, or Anchorage, able to receive anything from Seattle?

A. Well, at that time I do know that from ACS Seattle to ACS Anchorage we had leased lines, telegraph and phone, around through Canada.

Q. What is the next entry with regard to communications or the lack of them with Seattle? [59]

A. At 0020 Greenwich, 4:20 p.m. Seattle, we made contact with AAH twelve and thirteen thousand; signals good both ways, up to long distance for traffic. AAH, which is ACS Seattle, advised they had line trouble.

Q. Would you describe the technical meaning of the term used there, "line trouble," if it has any?

A. Well, line trouble could be any number of disturbances which would be a failure between the



(Testimony of Archie Zehe.)

two points on this control cable, or any control cable as far as that goes.

Q. What control cable was involved here?

A. This control cable would have had to have been between the ACS at the Federal Building and the Fort Lawton transmitter, because that was designated as the control cable for this circuit.

Q. You say would have had to have been there. Why would it necessarily have had to have been there? Why could it not have been somewhere else between Kodiak and Fort Lawton?

A. Well, I assumed it would have had to have been there, the fact that my circuit diagram and routing facilities show it there and no other way.

Q. Was there any other line in the circuit?

A. Pardon?

Q. Is there any other line in your circuit other than the line between ACS Seattle and Fort Lawton? [60]

A. No, sir, there isn't.

The Court: By "line" do you mean cable line, submarine?

A. Correct, sir.

Q. (By Mr. Mikkeltorg): Is that what you mean?

A. Yes, sir.

The Court: Do I correctly understand you in hearing you say, as I thought you did, that the only submarine cable concerned in the transmission of messages between here and Kodiak, Alaska by the ACS is a relatively short cable between a point on the Seattle waterfront and the Fort Lawton transmitter station?

(Testimony of Archie Zehe.)

A. At that time, yes, sir.

The Court: That was March 21, 1955?

A. Yes, sir, Page 80.

The Court: Where is the site of the end of the cable in Elliott Bay? Where does it land, that little cable running between Fort Lawton and this waterfront here, where does it land in Elliott Bay?

A. That, sir, I—I don't know. I haven't been stationed here long enough. I could only go on Colonel Rogers' statement this morning at that pier.

The Court: Is it described with a number?

A. Yes, sir. Pier 57, I believe.

The Court: Was Pier 57 ever known by any [61] other local popular name to your knowledge?

A. Not to mine, sir. I'm not familiar with Seattle.

The Court: Proceed.

Q. (By Mr. Mikkelsen): Sergeant, referring you back to the entry opposite 0005 Greenwich time or 4:05 Seattle time, would you explain what was meant by the entry regarding the AAH carrier and the other symbols in that line?

A. Well, that carrier would have been an electronic signal emitted from the transmitter at the Fort Lawton site, the signal that could have come only from there. Any other signal such as voice would have had to have been coming from the Federal Building, the ACS location in the Federal Building here.

Q. Does that entry indicate that anything was heard on that carrier signal?

(Testimony of Archie Zehe.)

A. No, sir, it merely indicates that the carrier was on there, the circuit was idle.

Q. What kind of a condition is that? What does that indicate?

A. Well, as the entry states, the operator assumed that the Seattle end had not—either had not cleared Adak or for some unknown reason had failed to contact us, and that's why the next entry at 0006 shows that we [62] advised Seattle via Anchorage that we were waiting for them. We would have been calling from our end, calling Seattle, and requesting that they contact us. In this case they did not, so that is the reason that we show that we did make contact around through Anchorage. We as you call it passed the word through Anchorage and let them know that we were waiting for them.

Q. Were you in charge of the reception and making of these records at that time?

A. I supervised the making of these records.

Q. Do you recall whether you took any action on learning of this difficulty?

A. No, sir, I personally did not take any action on this. I checked these logs hourly. Had there been difficulty which extended to a longer period of time, then I would have personally taken action to find out just why communications had not been restored.

Q. What arrangements were made, if any, to restore communications insofar as you know?

A. That is not known to me.

(Testimony of Archie Zehe.)

Mr. Mikkelsen: You may cross examine.

Cross Examination

Q. (By Mr. Morrow): Sergeant Zehe, on Page 80 of Libellant's Exhibit 1, [63] following down from your entry of 0020 Greenwich time I notice an entry 0304 Greenwich time, "Clear AAH Seattle 12/13 signals good all sked. Traffic light." Is that when the Seattle-Fort Lawton line was cleared?

A. Well, not necessarily, sir.

Q. First of all would you interpolate that Greenwich time into Seattle time?

A. 7:04 p.m.

Q. And what date would that be?

A. That's the 21st calendar day. It would be the 22nd Greenwich.

Q. It would be March 21st Seattle time, 7:04 p.m.?

A. Yes, sir.

Q. Well, what does "Clear AAH Seattle" mean under the Seattle time of 7:04 p.m. on March 21, 1955?

A. We released the circuit. Our time was up, we released the circuit for operation to Adak, from Seattle to Adak, ACS Adak.

Q. What does "12/13" mean?

A. That's the frequencies, the transmitting and receiving frequencies, 12,000 being ours, thirteen being Seattle's.

Q. And what does the rest of the entry mean under the 0304 Greenwich time, which is 7:04 p.m. Seattle time, on March 21st?

(Testimony of Archie Zehe.)

A. It indicates that the radio signals were good for that [64] schedule and the traffic was light.

Q. Does "AAH" stand for the Seattle sign or call number of the Alaska Communication System?

A. It is the radio call sign of the Alaska Communication System station in Seattle.

Q. So that the entry that you have there with respect to 7:04 p.m. Seattle time March 21st is quite similar, is it not, to the signal you had at 2100 Greenwich time on Page 79 of the exhibit?

A. Yes, sir.

Q. Now, in connection with 2100 Greenwich time which you indicated to be 1:00 p.m. Seattle time, you concluded, I believe, in your testimony that the line between Seattle and Fort Lawton, that is the submarine cable, was working, isn't that correct?

A. Yes.

Q. You were getting through?

A. Yes, sir.

Q. Now, it's true then, is it not, that approximately the same entry for 7:04 p.m. March 21st under the entry of 0304 Greenwich time on Page 80 of the exhibit likewise indicates that the Fort Lawton and the Seattle line had been restored?

A. Well, service had been restored.

The Court: Is that 1:00 p.m. of the same day?

Mr. Morrow: No, 7:04 p.m.

The Witness: 7:04 p.m. now, your Honor, he's referring to.

Q. (By Mr. Morrow): Well, in your direct testimony you indicated that the service was in good



(Testimony of Archie Zehe.)

operation at 1:00 p.m., 2:00 p.m. and 3:00 p.m. on March 21, 1955, did you not?      A. Yes, sir.

Q. Referring to Seattle times. And you concluded that at 4:05 p.m. there was an interruption of service, did you not?

A. We hadn't made our contact yet. I assumed that there was an interruption.

Q. Well, actually you had concluded that there was no entry at 0001 Greenwich time, Page 80 of the exhibit, and from that lack of entry you concluded that there was no service, isn't that correct?

A. That is correct, sir.

Q. Yes. Now,—

The Court: Cannot Counsel stipulate there was no service on the line at such and such times?

Mr. Mikkelsen: The libelant will certainly stipulate that service was interrupted between 3:00 p.m. and 4:00 p.m. when Seattle failed to come through.

The Court: Whatever the cause it would seem [66] that you ought to be able to—

Mr. Morrow: Well, from these entries, your Honor, it appears that there was an interruption of service at 4:05 p.m. Seattle time, that at 4:20 p.m. they had line trouble from which the witness concluded that the line trouble was the submarine cable between Seattle and Fort Lawton, and then at 7:04 p.m., or the entry for 0304 Greenwich time, that the service was restored.

Q. (By Mr. Morrow): Is that correct, Sergeant?



(Testimony of Archie Zehe.)

A. Yes, sir. I had service at that time.

The Court: When did you cease to have any service according to that record or your other knowledge?

A. My last service with Seattle was at 3:00 p.m. when we cleared to release the circuit for Adak. I did not have service again with Seattle until 4:20 p.m.

The Court: 4:20 p.m.?

A. Yes, sir.

The Court: What does 7:04 p.m. have to do with the clearance or blockage of the system?

A. I don't know, he——

Mr. Morrow: That shows the same entry, your Honor, "Clear AAH," has appeared prior to the interruption of service.

Q. (By Mr. Morrow): Isn't that correct? [67]

A. Yes. It's a routine entry where the circuit is working properly, it's a routine entry to show that and also what the traffic conditions were.

The Court: May I assume from what you have already said that you find from that record an indication from it that there was a blockage of transmissions of messages over this circuit for a certain period of time in the afternoon on the 21st of March, 1955? Is that true or not?

A. Yes, sir.

The Court: Will you state the earliest time shown in that record when that blockage of transmissions appeared in that record?

A. When it ceased or when it started?

(Testimony of Archie Zehe.)

The Court: No, when it started, when the blockage became absolute.

A. At 4:20 p.m. Seattle time.

The Court: That is when it cleared, is it not, 4:20?

A. That's when it came back, yes, sir.

The Court: That is not what I am asking you. When did the messaging over that system shut down?

A. With me——

The Court: For the last time. When did it shut down for the last time? Was it at 4:00 o'clock or [68] 3:00 o'clock or——

A. At 3:00 p.m. Seattle time.

The Court: All right. When was the first message that you can see from that record or that you recall from your own knowledge that came back over that line after the line was cleared?

A. 4:20 p.m.

The Court: So that indicates, does it or does it not indicate, that the transmission of messages over that system was blocked from 3:00 p.m. until 4:10, did you say?

A. 4:20.

The Court: 4:20 p.m. on March 21st, is that right?

A. It would not indicate to me that the service was lost between 3:00 and 4:00, sir, because I was not working the circuit between 3:00 and 4:00.

The Court: What does that mean, if anything, as to whether or not there was any interference with

(Testimony of Archie Zehe.)

the service on that cable or that circuit during that time between 3:00 and 4:20?

A. At 3:00 p.m. I released the circuit and left the circuit, released it for Adak to work.

The Court: Do you see in the record there when the circuit was closed down on account of blockage [69] or anything else?

A. No, sir, it would not appear on——

The Court: There is not anything to show in that record when this system quit transmitting messages, is that right?

A. For me it would be 4:00 o'clock when I did not make contact with Seattle then.

The Court: Does it show that?

A. At 4:05 p.m.

The Court: That is what I asked you in the first place. I want to know what hour in the afternoon was the last message indicated by that record as having been transmitted over that system prior to 4:20. You say that is when it opened again.

A. Yes, sir.

The Court: When was it? When was the last time before it opened up for good and business resumed normally?

A. Well, my last message was transmitted to them when I closed at 3:00 p.m. and at 4:00 p.m. I did not make contact, and at 4:05 p.m. I indicate that I have not had contact with them yet.

The Court: Since when?

A. Since 3:00 p.m.

The Court: What conclusion, if any, do you [70]

(Testimony of Archie Zehe.)

draw from that circumstance as to whether the line was blocked from any physical cause?

A. I can only indicate that the line was out from 4:05 p.m. to 4:20 p.m. That is the only time that I can indicate that it was out, from my station.

The Court: At what time?

A. 4:05 p.m.

The Court: That is at Kodiak?

A. Yes, sir, and that's Seattle time.

The Court: And at Kodiak it came back on at 4:20?

A. Yes, sir.

The Court: That is fifteen minutes later?

A. Yes, sir.

The Court: Is that the only time when your station in Kodiak was blocked out on account of any conditions in Seattle or anywhere else on the line?

A. During that time. I assume that that trouble was on the submarine cable. I wouldn't know. I didn't know.

The Court: I am asking you is that the only time from 12:00 o'clock noon on the 21st day of March to 7:00 o'clock in the evening when as far as Kodiak receiving messages and that record are concerned the only time that there was an absolute blockage that you [71] can prove by that record that you made at the time was from 4:05 to 4:20 p.m.

A. Yes, sir.

The Court: You may inquire.

(Testimony of Archie Zehe.)

Mr. Morrow: That's all. I have no further questions.

Mr. Mikkelborg: One or two questions.

### Redirect Examination

Q. (By Mr. Mikkelborg): Sergeant, were you scheduled to have regular traffic with ACS Seattle on each hour?

A. Yes, sir, each even hour.

Q. Each even hour. Were you scheduled to receive calls or communicate with ACS Seattle at 4:00 p.m. Seattle time? A. Yes, sir.

Q. Did you receive a call at 4:00 p.m. Seattle time? A. No, sir.

Q. What did that indicate to you?

A. It indicated that there would have to be trouble in Seattle or somebody was sleeping at the switch, which I doubt.

Q. Is it possible for you to tell from this record when the disruption occurred between the hours of the last [72] transmission at 3:00 and the next regularly scheduled transmission at 4:00 p.m.?

A. I don't quite follow you.

Q. Is it possible for you to determine from that, from those two entries for 3:00 and the lack of the entry for 4:00, when the trouble, if any, occurred?

A. No, I couldn't, other than — I didn't make contact.

Q. Why not?

A. I did not make contact at 4:00 o'clock. I did not make contact until 4:20 p.m.

(Testimony of Archie Zehe.)

Q. You were scheduled to make a contact for 4:00 o'clock, were you?

A. At 4:00 o'clock, that's correct.

Q. You were not scheduled to make a contact between 3:00 and 4:00, is that correct?

A. No, that was Adak time.

Q. Is it correct then, Sergeant, that the first notice of any difficulty with the ACS Seattle communication to ACS Kodiak was at 4:00 o'clock?

A. Yes, sir, it would be. It was.

Q. And what entries further explain that difficulty, if any?

A. The entry at 0020 Greenwich, that's 4:20 p.m., the Seattle technician advised us that he had line trouble. That explained to me the reason for the delay between 4:00 o'clock and 4:20 p.m. [73]

Q. And line trouble in that circuit which you worked would refer to what?

A. It would have to refer to the submarine cable according to the circuit diagrams.

Q. Are there alternative methods of communicating with ACS Seattle other than by the circuit you have just described here today, the circuit which includes the submarine cable segment between ACS Seattle and your transmitter at Fort Lawton?

A. You mean——

Q. Is there any alternative means provided for the circuit between your station in Seattle and the station in Kodiak?

A. No, sir, not directly.

Q. Can you get a message from ACS Seattle by



(Testimony of Archie Zehe.)

any means other than the use of the ACS Seattle to Fort Lawton submarine cable?

A. It all depends on what type of message you're referring to, sir.

Q. A telephone message?

A. No, sir. It would have had to have been from the ACS in the Federal Building via this submarine cable to the Fort Lawton transmitter, thence by electronic equipment on into Kodiak.

Q. That is the normal method of transmitting, is it not?

A. Yes, sir. [74]

Q. And in the event of a casualty to the submarine cable how would it be handled?

A. It would be up to Seattle to take proper steps to get leased lines from the Pacific Telephone & Tel. to reroute these transmissions on out to Fort Lawton.

Q. Are such lines available to your knowledge?

A. To my knowledge I couldn't say. I assume those agreements are made and in force.

Mr. Mikkelsen: No further questions.

#### Recross Examination

Q. (By Mr. Morrow): Sergeant, do you have any entries in your log between 3:55 p.m. Seattle time and 4:05 p.m. Seattle time on March 21st?

A. Between 3:55——

Q. Yes. A. ——and 4:05?

Q. Yes. A. Negative.

Q. You have no entries for that period?

A. No, sir. The last entry on the sheet is at

(Testimony of Archie Zehe.)

2355, which is 3:55 p.m., when we cleared our log for the new day.

Q. So your log is devoid of any information for the period ten minutes prior to 4:05 p.m. on March 21st? [75]

A. Yes, sir, correct.

Mr. Morrow: That's all.

### Redirect Examination

Q. (By Mr. Mikkeltorg): Would you state, Sergeant, what significance the absence of the 4:00 o'clock entry means to you as station commander or as——

Mr. Morrow: Objected to as repetitious. That has been gone into twice.

The Court: The objection is sustained.

Mr. Mikkeltorg: Very well. No further questions.

The Court: Step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Mikkeltorg: The libelant will call Captain Langworthy.

The Court: Come forward, Captain, and be sworn as a witness. [76]

### BURT LANGWORTHY

called as a witness in behalf of libelant, being first duly sworn, was examined and testified as follows:

### Direct Examination

Q. (By Mr. Mikkeltorg): Will you please state your name, sir?

(Testimony of Burt Langworthy.)

A. My name is Burt Langworthy.

Q. Would you spell it, please?

A. The first name is B-u-r-t and the second is L-a-n-g-w-o-r-t-h-y.

Q. Would you state your address, sir?

A. Box 506 Mirror Lake, Washington.

The Court: Mirror Lake, Washington. Where is that?

A. About nine miles this side of Tacoma.

Q. (By Mr. Mikkelborg): And what is your occupation, sir?

A. I'm a harborman employed by the City of Seattle.

Q. And how long have you been so employed?

A. Approximately six years.

Q. Are you in charge of any particular vessel?

A. I am in charge of Patrol Boat No. 7.

Q. Would you describe your duties, please?

A. Well, my duties are to enforce and to regulate the harbor ordinances or laws that pertain to the City of Seattle. This entails governing of excess speed in the [77] harbor, fire and explosives ordinances, safety on piers, reclaiming boats, helping to salvage and attending to boats in distress, and dragging for bodies.

Q. And where are your duties performed? Where are these duties performed?

A. Within the corporate city limits of the City of Seattle, and this includes from Fauntleroy to the south to Golden Gardens to the north.

(Testimony of Burt Langworthy.)

Q. Do you cover these areas in connection with your operations of Patrol Boat No. 7?

A. Yes, we do. This entire area is not covered all the time, only with the exception of calls. The only area that is covered is the immediate harbor, which extends from Smith Cove and Elliott Bay, including the East and the West Waterways and the Duwamish River up to the 17th Avenue South Bridge. That is dependent upon the depth of the water or the tide.

Q. Were you engaged in these duties on March 21, 1955, do you remember?      A. Yes, I was.

Q. Where were you on that day?

A. We were on patrol during this particular time from approximately 12:30 until 3:30.

Q. And what area or in what place were you during this patrol from 12:00 until 3:30? [78]

A. We ran north from Pier 50 to Pier 71 and turned and went south and up the East Waterway as far as Pier 24 and out around Harbor Island and up the West Waterway as far as Spokane Street Terminal.

Q. During this patrol do you recall the conditions of the harbor at that time?

A. Yes. There was a strong southeasterly wind or gale blowing. The weather reports that we had received in the morning were from 25 to 35 miles an hour with gusts to 40.

Q. And did you observe this wind?

A. Yes. With the exception of the ferries and the whitecaps on the bay, the ferries had a very

(Testimony of Burt Langworthy.)

pronounced list to the starboard, or — yes, to the starboard from the southerly wind. They looked like sailing ships with a list.

Q. Did you observe the traffic in the harbor on that day?

A. Yes. The traffic was very, very light with the exception of the ferries and possibly maybe one or two towboats with tows, but being to the adversity of weather it was very unpractical to be out there.

Q. Directing your attention to the portion of your patrol which you stated takes you out of the West Waterway, did you observe any traffic in the harbor at that time other than the ferries? [79]

A. Yes. The Princess boat on her scheduled run, I noticed her approximately five minutes after 3:00 in the afternoon just inside or south of Four Mile Rock.

Q. Did you observe her approach?

A. Yes.

Q. Were you aware of where she was headed?

A. Yes, I was.

Q. Are you familiar with the Princess boat?

A. Yes, I am, with their schedule and their time.

Q. What did you observe to — by the way, did you observe this Princess boat so as to identify it?

A. Yes, I did.

Q. What ship was it, if you remember?

A. Louise, the Princess Louise. I'm not clear on that.

Q. What did you observe with respect to the Princess Louise or the Princess boat arriving?

(Testimony of Burt Langworthy.)

A. Well, she came in on her normal course into the harbor and in towards the pier, with the exception of the last portion, and she came farther south than usual.

Q. Did you have any impression as to why she would be coming further south?

A. Due to the force of the wind. As far as I could determine, that was it.

Q. Are you familiar with the area in which you observed the Princess boat? [80]

A. Yes, I am.

Q. What piers are those?

A. Well, the Princess boat docks at Pier 64, which is the CPR terminal at Lenora Street.

Q. Could you see the Princess boat clearly?

A. Yes, I could. I was watching her with a pair of field glasses from the time that we left—rather until the time that I first sighted her inside of Four Mile Rock until the time that we were cut off from view entering into our berth, which is Pier 49.

Q. About how long a time was that that you observed this Princess boat?

A. This was a period of approximately 3:00 o'clock till 3:30. Seven minutes after 3:00, I believe it was.

Q. Would you describe this approach that you say you observed in terms of its relation to the piers in that area?

A. Well, like I stated, she came in on her normal course with the exception of the last portion, and she went farther south than usual. I couldn't



(Testimony of Burt Langworthy.)

tell you the exact number of feet or in distance, as I was at an angle.

Q. Off what piers did she appear to be from your position in the patrol boat?

A. Well,— [81]

Q. During the southermost portion of her approach.

A. The CPR boat could have been as far as Pier 59.

Q. What piers are in that vicinity?

A. Pier 57 is University Street, running on up to Pier 64, which is the CPR pier, is the Lenora Street terminal.

Q. What is the next pier south of Pier 57, if you know?

A. It would be Pier 56. I'm not — let's see, I don't believe I can remember the street.

Q. Would you describe her approach and maneuvers as you observed them near these piers?

A. Like I stated, the ship came in on its normal course with the exception of the last portion, and it came farther south and—

Q. Did it make a turn as it approached?

A. Yes, it made a slight turn as it approached.

Q. Which way, or in terms of its own right or left which way did it turn?

A. It would be to the left as it approached toward the piers, this is off the pier headline, approximately a tenth of a mile, and like I say, it was farther south.

(Testimony of Burt Langworthy.)

Q. In what direction did it head after it turned to its left?

A. It would turn to an easterly direction.

Q. From its position at the southernmost portion of this as you observed it did it head east or did it head— [82] what pier would it have been heading for if it were heading east, would you say?

A. Well, after it—will you restate that, please?

Q. You say that the Princess boat turned to her left at the southernmost point of her approach and headed—I asked you in what direction and I believe you said east. Would you state what pier it would have been headed for if it were heading east as you said?

A. At that time I believe it would have been headed towards Pier 64, after it had made its initial turn. This turn is not a very pronounced turn, but it is a turn of normal course that it always takes. In this case the ship itself was farther to the south this day than usual, but it still made its turn.

Q. Off what pier was it when it made its turn farther to the south?

A. I would say Pier 59, or within that vicinity.

Q. Was there anything else about the Princess boat that you observed while watching her, any maneuvers that she made or anything she might have done?

A. Well, I observed that she had her hook down, her anchor.

Q. And how did you observe that?

A. Well, I could see the anchor chain leading

(Testimony of Burt Langworthy.)

through the hawse pipe and over the side. I also noticed that there was a certain amount of scope on the anchor chain. [83]

Q. What do you mean by scope, Mr. Langworthy?

A. This is the distance or the angle that the anchor chain leads from the ship. It's in accordance with the amount of anchor chain that is played out, the greater the scope according to the depth of the water.

Q. Are you familiar with the area south of Pier 64, the area around Pier 57?

A. Yes, sir, I am.

Q. Are there any distinguishing characteristics with respect to that area?

A. There is a cable area sign posted on the sea wall between Pier 57 and Pier 56.

Q. How far is that visible out into the harbor to the west or northwest?

A. Well, to the west it would be visible a mile.

Q. Had you completed a patrol in that area on that date on March 21, 1955?

A. Yes, we had.

Q. And did you observe that sign on that date?

A. With due respect—I always observe it. We inspected it. I always observe it. There was no special note made, but I know the sign was there at the time.

Q. How long has that sign been there, if you know, to your knowledge, Captain?

(Testimony of Burt Langworthy.)

A. The sign has been there for five years that I know of. [84]

The Court: What does the sign say?

Q. (By Mr. Mikkelborg): Yes, Captain, would you state what the sign is or says?

A. The sign states, "Cable area, no anchoring."

Q. How far is that from the general area where you observed the Princess boat making her turn? Is it close or far?

A. No, it's moderately close, within 500 yards or less.

Q. In which direction?

A. Will you please repeat that? Which direction, what do you mean?

Q. You say you observed the Princess boat being something like 500 yards from I believe Pier 57. A. Right.

Q. In what direction from Pier 57, south, north, east, west, or what?

A. Well, as far as I could determine at the time it would have been—the boat would have been northwest or west. I would say due west.

Q. Due west of what pier?

A. Of Pier 57.

Q. And at what point was this in her maneuvers?

A. This was at her turn, when she was approaching, as far as I could determine.

Q. Captain, you say that you observed her due west of Pier 57. Would you explain—I may have misunderstood you. [85] Would you explain how

(Testimony of Burt Langworthy.)

that is with relation to what you said earlier with regard to Pier 58 or 59? Perhaps you could clear it up by describing the operation of the turn in relation to these piers.

Mr. Morrow: I object to the leading nature of the question. The witness has identified the turn of the Princess Louise at a certain pier. His testimony has been inconsistent, and I——

The Court: The objection is sustained, not for the reasons stated for not accepting the truth particularly of the last commenting statement, but the objection as leading is sustained, with the privilege of redrafting the question if you feel you can properly.

Q. (By Mr. Mikkeltorg): You heard Mr. Morrow's comments, Captain Langworthy. Would you again relate what you observed with respect to the maneuvers of the Princess Louise, relating it wherever possible to some point which we can identify on the shore?

A. Well, I could state it. I observed the boat on its normal approach from the position where we were. This was at the entrance to the West Waterway. I observed the Princess boat coming in to make her berth, in other words to her approach, and I also observed that the boat was farther to the south than it normally is. I couldn't tell you how close to the pier it came. [86]

Q. What pier?

A. To Pier 57 and to Pier 64, because I was at an angle. From where I looked, from where I could



(Testimony of Burt Langworthy.)

see and where I was watching with the field glasses it looked like it was very, very close, but the number of feet I couldn't tell you. I don't know.

Q. What was her position as you last saw her before you lost sight of her?

A. Well, let me finish first, please.

Q. Yes, very well.

A. The Princess boat came in. I did not see her anchor drop but I saw her anchor chain leading over and I also saw the scope of her anchor chain leading out. In other words, the angle. I would just make a guess it was approximately thirty-five degrees or so, more or less. And then she started backing down and then was assisted by a tug after she was right close to the pier. Now, the distance I don't know. And the tug assisted her until she was out in the harbor again.

Q. And is that where you lost—where did you lose sight of her?

A. And then at that time we went into Pier 59, which is our regular berth, and we tied up.

Q. Pier 59?

A. Pier 49, excuse me. Pier 49, which we tied up, and I [87] lost sight of her at 3:30, and at this time the Princess boat was out in the harbor again.

Q. Referring to your testimony regarding the scope of the anchor chain, what does that mean? What does the angle on the chain mean, if anything, with regard to that angle?

A. Well, it means that the chain is being drug or pulled forward or aft, whichever way the scope



(Testimony of Burt Langworthy.)

would show. If the scope was leading from the bow to the stern it would mean that the anchor was being pulled, and it was leading from the bow away from the bow, it would mean that it was being drug.

Q. Thank you, Mr. Langworthy.

Mr. Mikkelborg: You may cross examine, Counsel.

The Court: At this time we will take a short recess, about ten minutes.

(Short recess.)

The Court: You may proceed. All are present.

#### Cross Examination

Q. (By Mr. Morrow): Captain Langworthy, do you hold any licenses with the United States or the State of Washington or any other governmental body? A. No, sir. [88]

Q. Have you ever held any licenses——

A. No, sir.

Q. ——from the Department of Commerce or the United States Coast Guard? A. No, sir.

Q. How long have you been employed by the City of Seattle?

A. I went to work for the City of Seattle in 1951, August 29th. I worked for them until 1953, October 30th, and I was laid off and I came back to work for the City again on the same job on July 6, 1954.

Q. How long had you been employed on the harbor patrol boat prior to March 21, 1955?

(Testimony of Burt Langworthy.)

A. On this particular boat approximately two years.

Q. Was that continuously? A. Yes, sir.

Q. I see. And how old are you, sir?

A. Thirty-one.

Q. You're thirty-one years old?

The Court: How much?

A. Thirty-one.

Q. (By Mr. Morrow): Had you had previous experience on the water? A. Yes.

Q. What was that?

A. I worked for Washington Tug & Barge during the summer [89] of '51. Prior to that I worked for New England Fish Company from 1947 until 1950, both years inclusive, and I worked for New England Fish Company in 1944. I was employed as a deckhand, mate and a second engineer during these various years.

Q. That was on a——

A. Cannery tender in Alaska.

Q. In Alaska? A. Yes, sir.

The Court: How old were you when you began doing that kind of work?

A. Seventeen years old.

Q. (By Mr. Morrow): Have you been employed in connection with marine industry since you were seventeen in some capacity or other?

A. With the exception—yes, I have. I was going to say with the exception of my service, but I was also connected with the marine end of it there also.

(Testimony of Burt Langworthy.)

Q. And I understand that you are now the senior harbor patrolman; is that correct?

A. On my particular watch.

Q. On your particular watch. Now, what was your watch on March 21, 1955?

A. From 8:00 o'clock in the morning until 4:00 o'clock in the afternoon. [90]

Q. Did the harbor patrol boat No. 7 maintain a log? A. Yes.

Q. And is that log available for the period of March, 1955? A. That I couldn't say.

Q. What entries does your log contain?

A. Mostly of inspections pertaining to safety, anything that might be connected with the storage of inflammable materials, red label cargo up on piers, or anything that would have or concern with the ordinances of the City of Seattle.

Q. Would your log show the dates on which you were on harbor patrol? A. Yes.

Q. Would they likewise have entries pertaining to the weather? A. Yes.

Q. How long has it been since you looked at the entries of your log for March 21, 1955?

A. Approximately a year, I would say, just guessing.

Q. Did someone interview you in connection with this matter about a year ago?

A. I believe it was about that time, yes.

Q. Was that an investigator for the United States Government? A. Yes, it was.

(Testimony of Burt Langworthy.)

Q. And did he have access to your log at that time? [91]      A. No, he did not.

Q. Did you refer to your log at that time?

A. I did.

Q. Is your log available now?

A. That I don't know.

Q. So all your testimony here today is simply based upon recollection and without reference to any entries in your log book, is that correct?

A. Would you please say that again?

The Court: Let it be repeated by the reporter.

Mr. Morrow: I can repeat it.

The Court: Let the reporter read it.

Mr. Morrow: All right.

(The reporter read the last question.)

A. Yes.

Q. (By Mr. Morrow): By the way, how did you refresh your recollection for your testimony today?

A. Like I said, I was approached shortly after the time of this accident, or this occurred, this mishap occurred, and then approximately a year later, and then approximately a month ago.

Q. Have you discussed this matter with somebody recently?      A. Yes.

Q. Who have you discussed it with?

A. Mr. Mikkelborg. [92]

Q. Did somebody representing the United States take your statement concerning this matter?

A. Yes.

(Testimony of Burt Langworthy.)

Q. And was any reference made by you to your log at that time?      A. I cannot remember.

Q. Now, you have indicated in your testimony that you made your observations in this matter between 3:07 o'clock p.m. and 3:30 o'clock p.m. on March 21, 1955; is that correct?

A. That's correct.

Q. That would be for a period then of twenty-three minutes, would it?

A. Approximately, yes.

Q. What position was the harbor boat No. 7 in at 3:07 p.m.?

A. We were up the West Waterway approximately a quarter of a mile.

Q. A quarter of a mile where, from Todds?

A. Yes, from the blinker light at Todds.

Q. So that at 3:07 Pier 64 was not as yet in view, was it?      A. Correct.

Q. Now, how long after 3:07 was it that say Pier 64 came into view?

A. Maybe six minutes, five minutes.

Q. Five or six minutes? [93]

A. Approximately.

Q. What was the Princess Louise in the first time you observed her?

A. She was in need of assistance. Oh, I beg your pardon. She was on her scheduled course.

Q. Do you mean she was coming in toward Pier 64?

A. She was coming into the harbor.

Q. Coming into the harbor?      A. Yes.

(Testimony of Burt Langworthy.)

Q. Was that at 3:07 p.m.?

A. It was very near to it.

Q. Well, now, how did you determine the time 3:07 p.m.?

A. We have certain check points that are logged as to where we are and the time, and this check point at this time was Albers Milling, or Fisher's Milling Company, Fisher's flour mill.

Q. You couldn't see the Princess Louise from Fisher's, could you?

A. From the corner of Fisher's, yes.

Q. Did you?

A. I don't know if I did or not.

Q. So you don't know whether you first saw the Princess at 3:07 or a short time thereafter, is that correct?

A. No, a short time prior.

Q. A short time prior? [94]

A. Right. I said in my statement it was approximately 3:00 o'clock or 3:07.

Q. Where is this record that you speak of that shows this time?

A. It would be in the Seattle Harbor Department files.

Q. Is that contained in the log?

A. This portion that I tell you the check point is, yes.

Q. Now, by the way, at 3:07 were you under way?

A. Yes.

Q. What time would you have reached the north-  
erly end of West Waterway?



(Testimony of Burt Langworthy.)

A. Approximately 3:15, or maybe just a few minutes prior.

Q. Now, was the Princess Louise within view of yourself aboard the harbor boat No. 7 during that period of time? A. Yes.

Q. After passing the—what is it, a light or a beacon at the north end of West Waterway?

A. It's a blinker light, yes.

Q. Yes. After passing that beacon or light what course did your vessel take?

A. An easterly course.

Q. That would be more northeasterly, wouldn't it, toward Pier 49?

A. No, sir. We don't run on straight lines.

Q. I see. [95] A. We're on a patrol.

Q. I see. You were on patrol? A. Right.

Q. Were you in charge of the watch?

A. Yes.

Q. You had other things to do then than to watch the Princess Louise dock, didn't you?

A. I did, yes.

Q. And did you do other things?

A. With the exception of what called for my attention, no.

Q. How many members did you have on your crew? A. One.

Q. And what were his duties?

A. He was running—what are his duties?

Q. What were his duties at the time?

A. He had the helm.

Q. He was steering? A. Right.

(Testimony of Burt Langworthy.)

Q. Under your direction?

A. Well, he had the helm. I can't say he was under my direction. He knew the course, he knew what he was supposed to do and he did it.

Q. By the way, where is Pier 49 in reference to the footing of any Seattle street?

A. It isn't any more. It has been removed. [96]

Q. Well, at that time was it at the foot of Jackson Street?

A. The foot of Washington Street.

Q. The foot of Washington Street. So when you came out of East Waterway now you took a course to the east, and how long did you run on an easterly course?

A. Approximately four to five or six minutes.

Q. And where did that take you to?

A. Within a line between the piers of 39 and 42.

Q. And were were the piers of 39 and 42 in 1955?

A. Right where they are located now.

Q. And where is that, with reference to some Seattle street?

A. That's south of King Street.

Q. About ten piers down from 49, is that it, or ten blocks, approximately ten blocks, or can you give us a better idea of just where it is?

A. Pier 43 is King Street.

Q. I see.

A. I beg your pardon. Pier 45 is King Street pier.

Q. And then from that point where did you go?

(Testimony of Burt Langworthy.)

A. Up the face of the harbor on the pier head-line into our pier.

Q. Now, what was your entire running time?

A. I don't know the exact running time. I could only approximate it.

Q. Was it between 3:30 and 3:07, approximately twenty-three [97] minutes?

A. Do you mean our complete running time?

Q. Yes.

A. No, sir. From the time we rang out until the time we rang in I would say it was approximately two and a half hours.

Q. Oh, I mean from this 3:07 point where you were out near Albers until you got to your dock.

A. It would be from approximately 3:00 or 3:07 until approximately 3:30.

Q. Approximately twenty-three minutes running time, is that correct?      A. Yes, right.

Q. That's the period I'm talking about, Captain. Now, during that time how many observations did you make of the Princess Louise and her approach to Pier 64?

A. I watched her continuously as much as I could spare from taking the field glasses down and looking at our own position and looking on shore and then returning my attention to her.

Q. How many times did you pick up your field glasses to observe the Princess Louise on her approach to Pier 64?      A. I can't tell you.

Q. Well, would it have been once?

(Testimony of Burt Langworthy.)

A. I held the glasses, I imagine, I had them around my neck. [98]

Q. Did you hold the glasses on her for the full twenty-three minutes? A. No, sir.

Q. Did you put the glasses down on several occasions at least? A. I may have.

Q. Well, what is your best recollection as to how many observations you made of the Princess Louise with your binoculars?

A. Well, let's say twenty-five.

Q. Twenty-five times? A. Yes, sir.

Q. You were then picking up and putting the glasses down about once a minute?

A. Once, yes, it might have been that short a time.

Q. I see. So you had practically a constant view of the Princess Louise through the binoculars during this period of twenty-three minutes, is that correct? You got a good look at her? A. Yes.

Q. Now, you said in your direct testimony, Captain Langworthy, that you couldn't tell how far out the Princess Louise was from Pier 57 or Pier 64. Now, is that because of your line of vision from West Waterway? A. That's correct.

Q. In other words, you were looking northerly most of the time, were you not? A. Correct.

Q. You couldn't tell the distance between the Princess Louise and say the shore line or pier line because of your angle of vision at any time, could you? A. Not in so many feet, no.

(Testimony of Burt Langworthy.)

Q. No. Well, you couldn't be sure in any event, could you?      A. Yes.

Q. Well, now, if you looked right straight down this wall here and you have some side walls you can get an idea of how far it is, can't you?

A. Yes.

Q. But can you look straight ahead and judge distances very accurately?

A. You can when you have a background.

Q. Well, what was your background.

A. The lettering on the piers. In this particular case it would have been Pier 64.

Q. When you made the statement, Captain Langworthy, that you couldn't tell how far the Princess Louise was from Pier 57 or Pier 64, was it because you didn't have a sufficient angle or object upon which to make a calculation of distance?

A. Pardon me? [100]

Q. And that would be true too, wouldn't it, in respect to any position that the Louise had in reference to either Pier 57, Pier 59 or Pier 64 at any time, wouldn't it?

A. I can't answer that. I don't know.

Q. Well, you admit that your angle of vision was such that you couldn't tell accurate distances, isn't that correct?      A. Yes.

Q. Well, now, isn't it likewise true that you couldn't tell accurately the position of the Princess Louise at any time in reference to Piers 57, 59 or 64?

A. May I ask a question before I answer that?

(Testimony of Burt Langworthy.)

Q. Well, will you try to answer the question first, and then explain it, if you like.

Mr. Morrow: Would you read the question back.

The Court: It will be read.

(The reporter read the question beginning  
Line 8, this page.)

A. I will say this, that I could designate or I could approximate the position of the Princess boat by reasonable guess or by the background or by any object with any comparison to the ship, from which the ship might blot it out, or by man or by any other means which I have a background that I can compare with. A person that works on the water learns to judge distance very closely. I believe I have as much experience with the [101] limited service I had as anyone else, or I would say that my judge of distance was fairly accurate.

Q. (By Mr. Morrow): All right. Do you wish your testimony to be now that your judge of distance on this occasion was fairly accurate? Is that your testimony?

A. No, sir, I am staying to my same testimony.

Q. That it was not accurate, is that correct, that you can't be accurate in judging distances due to the position you were in with reference to Piers 57, 59 and 64? Is that a fair statement?

A. I'm sorry, I can't answer that. I don't realize what you're driving at.

Q. Very well. Now, can you with any reasonable degree of accuracy state where the Princess Louise was at any time in reference to Pier 64?



(Testimony of Burt Langworthy.)

A. Yes.

Q. Now, what position was your vessel in when you observed the Princess Louise in reference to a position in connection with 64?

A. To the southwest.

Q. You were southwest, therefore the Princess Louise and 64 were northeast, is that correct?

A. Yes.

Q. Now, were you looking—well, how far was the Princess Louise from 64 at this point that you're talking about? [102]

A. Do you mean the time she was in need of assistance?

Q. Well, let's fix first of all the time that you referred to when you observed the Princess Louise in connection with close proximity say to 64.

A. How close was she?

Q. No, the time, let's fix the time.

A. The time.

Q. You said your line of vision was northeast, you looked northeast. Now, what time was that?

A. I would say approximately 3:20.

Q. Approximately 3:20. That was ten minutes before you docked, is that correct?

A. Correct.

Q. Now, where was the Princess Louise at that time with reference to Pier 64?

A. She was very, very close to it and she was in need of assistance.

Q. Well, now, when you say very, very close, have you any idea of the distance?

(Testimony of Burt Langworthy.)

A. Within maybe fifty feet.

Q. Fifty feet. Now, was the Princess Louise between yourself and Pier 64 at the time?

A. You might say part of her was, yes.

Q. What was the fore and aft line of the Princess Louise when you observed her at 3:20? [103]

A. She was almost at a right angle with the pier headline.

Q. And how does the pier headline run?

A. It runs north and south.

Q. Was Pier 64 the other side or northeast of the Princess Louise when you made this observation? A. Right.

Q. It was therefore impossible, wasn't it, for you to determine what the distance was between the Princess Louise and Pier 64 in a direct line of vision, wasn't it? A. No, sir.

Q. It wasn't?

A. No, sir. If she hadn't been in trouble she wouldn't ask for assistance.

Q. Well, that isn't the question. When was it that you saw the Princess Louise opposite Pier 59 or in line with Pier 59?

A. On her approach to the pier, to Pier 64.

Q. You indicated that that was as far south as she got on the first approach?

A. I said from where we were, the vantage point, as near as I could tell.

Q. She got no further south than Pier 59?

A. I didn't say that.

Q. Well, that's where you saw her?

(Testimony of Burt Langworthy.)

A. Approximately, yes. [104]

Q. All right. What time was that again?

A. That was shortly after 3:00, between—approximately 3:15.

Q. Now, that was the first approach of the Princess Louise to Pier 64, was it?

A. (Witness nods his head.)

Q. Now, did you see the Princess Louise on her second approach? A. No, sir.

Q. You didn't see the Princess Louise on her second approach to Pier 64, is that correct?

A. That's correct.

Q. I see. Now, you have indicated that you saw the anchor chain and the anchor of the Princess Louise. Would you describe that again?

A. I saw the anchor chain, I didn't see the anchor.

Q. You didn't see the anchor? A. No, sir.

Q. Well where was the anchor chain?

A. The anchor chain was leading from the hawse pipe.

Q. Yes?

A. And there was scope. In other words, angle.

Q. Yes?

A. From the bow to the anchor chain.

Q. Now, what was the Princess Louise doing when you made [105] this observation of the anchor chain with the scope on it?

A. She was backing.

Q. And what was her position in relation to Pier 64 at that time?

(Testimony of Burt Langworthy.)

A. She was right off of the face of the pier.

Q. That's right. The Princess Louise when you observed her anchor chain was off Pier 64, isn't that correct? A. (Witness nods his head.)

Q. And wasn't she being blown to the northerly rather than to the southerly?

A. That's correct.

Q. Now, how far northerly did the Princess Louise move while she was in a stern position?

A. Will you clarify your question, please?

Mr. Morrow: Will you read it back.

A. No, may I ask this: Do you mean in the harbor or to the north?

Q. (By Mr. Morrow): To the north.

A. I couldn't tell you.

Q. Well, you agree that while the Princess Louise was making sternway into the harbor she was also being blown by the wind northerly, isn't that correct?

The Court: If you wish the question read, the Court will have that done. [106]

The Witness: May I have the question read, please?

The Court: Read the question, Mr. Reporter.

(The reporter read the last question.)

A. Yes.

Mr. Morrow: May we have this marked as an exhibit.

The Court: It will now be marked as the next exhibit.

(Testimony of Burt Langworthy.)

Mr. Morrow: We can mark it our exhibit.

The Court: It may be marked Respondent's Exhibit A-1.

(U. S. Coast and Geodetic Survey Chart No. 6449 was marked Respondent's Exhibit No. A-1 for identification.)

Mr. Mikkelborg: If the Court please, it is understood that what is now being marked Respondent's Exhibit A-1 for identification is the chart referred to in the pretrial order as Libelant's 1. We will stipulate to its admission.

The Court: Do you offer it now?

Mr. Morrow: Yes, I offer it.

The Court: It is now admitted.

(Respondent's Exhibit No. A-1 for identification was admitted in evidence.) [107]

Mr. Morrow: Let the record show that this is, in accordance with the pretrial order, C. and G. S. Map 6449 corrected to March 21, 1955.

Q. (By Mr. Morrow): Captain Langworthy, are you familiar with Respondent's Exhibit 1 before you? A. Yes, I am.

Q. Are you able to designate thereon which is Pier 64? A. Yes, I am.

Q. Would you take a lead pencil and run a line out from Pier 64 and mark opposite that "64"?

(Witness marks on Respondent's Exhibit No. A-1.)

Q. Now again, Captain Langworthy, what is

(Testimony of Burt Langworthy.)

your best estimate of the position of the Princess Louise off 64 when you saw her anchor chain as though she was dragging her anchor?

A. Do you want me to mark it?

Q. Well, I was asking for the distance first.

A. Approximately fifty feet.

Q. All right. Would you put that in there then, please

(Witness marks on Respondent's Exhibit No. A-1.)

Q. Would you put a mark opposite that, "P-1"?

(Witness marks on Respondent's Exhibit No. A-1.) [108]

Q. Now would you indicate thereon the course of the Princess Louise during the period she made sternway?

A. Do you want the full course?

Q. During the period she made steerageway, yes.

A. Sternway?

Q. Sternway. My error.

(Witness marks on Respondent's Exhibit No. A-1.)

Q. All right.

Mr. Morrow: May I see that now.

(Respondent's Exhibit No. A-1 was handed to Mr. Morrow.)

Q. Now, the end of your red line indicates a depth reading of 441 feet, is that correct?

A. That's approximately, yes.

Q. And is that where the vessel changed course then?



(Testimony of Burt Langworthy.)

A. I don't know. I lost course of her—I lost track of her at that time.

Q. You lost track of her at that time?

A. Yes.

Q. But she made sternway throughout the course you have indicated by the red line?

A. Yes.

Q. All right. Now would you just mark the end of the line "P-2"? [109]

(Witness marks on Respondent's Exhibit No.

A-1.)

Q. All right, thank you. Captain Langworthy, what is the distance from the beacon on West Waterway to Pier 64? Do you know that distance or would you like a pair of dividers to check it?

A. I would like a pair of dividers, please.

Q. All right.

(A pair of dividers was handed the witness.)

A. Approximately a mile and a quarter. If you want it closer than that I'll give it to you.

Q. That's close enough. What is the distance from your dock, Pier 49, to Pier 64?

A. Half a mile.

Q. By the way, what field of vision does your binoculars have?

A. 60-30, or 6-30, 6 power, 30 range.

Q. Could you pick up the entire Princess Louise in your field of vision in the binoculars?

A. Yes.

Q. Could you see what the Princess Louise was doing without binoculars?

(Testimony of Burt Langworthy.)

A. Prior to when we went into our berth we could, yes.

Q. But was that distinct? A. Pardon.

Q. Was it a distinct view?

A. Yes, very distinct.

Q. What was the weather at the time?

A. Very adverse.

Q. Was it clear?

A. Yes. It was sunny, to be exact.

Q. I see. All right, thank you Captain.

Mr. Morrow: That's all the questions I have at this time.

### Redirect Examination

Q. (By Mr. Mikkelborg): Captain Langworthy, referring to your testimony on cross examination with regard to the point in the Princess Louise's approach when you said she was some you estimated fifty feet off Pier 64 with the anchor chain showing a drag indicating that she was backing, had you observed the anchor or the anchor chain or the angle of the chain at any time prior to that point of her approach? A. Yes, I had.

Q. What was the earliest time that you recall seeing the anchor chain in her approach?

A. Shortly after she changed her course and headed towards Pier 64. [111]

Mr. Mikkelborg: No further questions.

Mr. Morrow: I have no questions.

The Court: Step down.

(Witness excused.)

The Court: We will take a recess in the trial at this point. Those connected with this trial are excused until tomorrow morning at 10:00 o'clock and may now retire.

(Thereupon, at 4:20 o'clock p.m. a recess herein was taken until 10:00 o'clock a.m., Wednesday, August 20, 1958.)

Wednesday, August 20, 1958. 10.05 o'clock a.m.

(All parties present as before.)

The Court: In the case on trial you may resume the proceedings.

Mr. Broz: If it please the Court, the Government will call William M. Martin.

The Court: Mr. Martin, please come forward and be sworn as a witness. [112]

### WILLIAM M. MARTIN

called as a witness in behalf of libelant, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Q. (By Mr. Broz): Will you state your name, address and occupation, please?

A. My name is William M. Martin. My address is 1645 North 167th Street, Seattle. My occupation is supervisory cartographer for the——

The Court: Supervisor of cartography?

A. Supervisory cartographer.

The Court: Supervisory cartographer. For whom?

(Testimony of William M. Martin.)

A. For the United States Coast and Geodetic Survey.

Q. (By Mr. Broz): Where is your office, Mr. Martin?

A. At 606 Federal Office Building.

Q. In Seattle? A. That is correct.

Q. How long have you held that position?

A. Since July of 1954.

Q. What are your duties generally?

A. To supervise the employees in the office relative to the plotting of hydrographic surveys, notes of which are taken by survey parties in the field.

Q. What is done with the information when it is received from the survey parties in the field?

A. The information is checked, plotted on survey sheets and map projections, they are sent to us for verification and compilation of nautical charts.

Q. How long have you been employed in this type of work?

A. I've been in the Seattle office since March of 1941.

Q. What did you do prior to 1941?

A. I spent one year as a lithographer in the Washington office of the Coast and Geodetic Survey.

Q. What did your duties as a lithographer in the Coast and Geodetic involve?

A. Work on glass plates, or rather glass negatives and aluminum plates related to the publication of nautical charts.

(Testimony of William M. Martin.)

Mr. Morrow: We will admit Mr. Martin's qualification as a cartographer.

The Court: If that can be used to save time——

Mr. Broz: That may be stipulated, your Honor.

The Court: The Court will approve of that.

Q. (By Mr. Broz): Can you state the general purpose of your work, Mr. Martin?

A. The general purpose of my work is the processing of surveys relative to the depth of waters lying off coastal areas. [114]

Q. Is that eventually translated into nautical charts? A. It is.

Q. Are these charts generally used by mariners?

A. They are.

Q. Can you state by whom they are used, if you know?

A. Well, they are used by the United States Navy, Coast Guard, commercial interests, commercial fishermen, commercial steamship companies, yachtsmen.

Q. That will be sufficient.

Mr. Broz: May the witness be shown Respondent's Exhibit No. A-1, please.

The Court: That will be done.

(The exhibit was handed to the witness.)

Q. (By Mr. Broz): Mr. Martin, please examine Respondent's Exhibit No. A-1 and state if you know whether that particular chart was in general use on March 21 of 1955. A. Yes, sir, it was.

The Court: What is the number of it, Mr. Martin?

(Testimony of William M. Martin.)

A. 6449, your Honor.

Q. (By Mr. Broz): Was that the latest Coast and Geodetic survey chart of the area charted thereon? A. Yes, sir.

Q. Does the chart show cable crossing areas for submarine telephone and telegraph cables? [115]

A. Yes, it does.

Q. Can you state whether this particular chart shows the existence of an underwater cable in the vicinity of Pier 57 in Elliott Bay?

A. It does, and it's so labeled.

Q. How is it labeled?

A. By the note "Cable area".

Q. What other indication appears in the chart indicating that a cable area exists off Pier 57?

A. Two red dashed lines extending offshore from the pier area.

Q. Mr. Martin, can you state from examining the chart and from your experience as a cartographer whether a ship lying directly off Pier 57 not more than 960 feet away from the head of the pier, would a ship lying in that position be within the charted area shown on the map as a cable area?

Mr. Morrow: I wish to object to the form of the question. The question calls for his knowledge within his experience and also in reference to the chart.

Now, the witness has not qualified himself in reference to a personal experience and knowledge of this particular area, but he has thus far limited his knowledge to that as a cartographer, by reason of



(Testimony of William M. Martin.)

which work he relies upon the experience and knowledge and [116] information received by that work, and I submit that he has not qualified himself from the point of personal experience and knowledge of this particular area to justify an expert opinion.

The Court: Any response?

Mr. Broz: Your Honor, the witness has qualified himself as a cartographer. If he can't read that chart, nobody can.

Mr. Morrow: Well, I have no objection to his referring to the chart, but the question went to his personal experience.

The Court: Insofar as it relates to personal experience the objection is sustained. Resubmit the question.

Q. (By Mr. Broz): Mr. Martin, are you acquainted with the area of Elliott Bay?

A. Yes, sir, I am.

Q. Has your work been concerned with the area known as Elliott Bay? A. At times it has been.

Q. Have you conducted surveys and have you compiled records and chart readings of Elliott Bay?

A. I have made chart corrections in the area of Elliott Bay.

The Court: I think you ought to give the witness a chance to say as of what time he did those [117] things or had those experiences.

Q. (By Mr. Broz): During what periods of times has your work been concerned with the area known as Elliott Bay?

(Testimony of William M. Martin.)

A. Well, just recently I completed a survey, not directly connected with hydrographic surveying, although it was controlled survey, triangulation from the area of Magnolia Bluff, Duwamish Head, Federal Office Building.

The Court: Yourself personally, did you ever determine the location of a cable landing in Elliott Bay?

A. No, sir. That is not the jurisdiction of the United States Coast and Geodetic Survey. That comes——

The Court: Did you ever determine where that was located personally so that you personally knew where it was located?

A. No, sir, I've had no——

The Court: Did you ever have any experience with any station using the cable which use depended upon official or record knowledge of the landing point of the cable in Elliott Bay?

A. I'm a little confused, your Honor.

The Court: Read the question.

(The reporter read the Court's last question.)

A. No, sir, I have not. [118]

The Court: You may inquire.

Q. (By Mr. Broz): Mr. Martin, have you ever examined the original survey records taken by the Coast and Geodetic Survey upon which the chart before you, Chart 6449, was drawn or compiled?

A. Yes, sir, I have.

Q. And are you familiar with the soundings off Pier 57?

A. Reasonably so, I think.

(Testimony of William M. Martin.)

Q. And the distances involved in the various references that appear on Chart 6449?

A. I believe so.

Q. Now with respect to that area off Pier 57, Mr. Martin, can you state whether a ship appearing or a ship in position 960 feet off Pier 57 would be within the charted area on the map, on the chart, described as "Cable area"?

Mr. Morrow: I wish to object.

The Court: If he knows.

Q. (By Mr. Broz): If you know.

The Court: After considering those conditions stated in the question.

Mr. Broz: Yes, your Honor.

Q. (By Mr. Broz): If you know, Mr. Martin.

Mr. Morrow: I wish to object to the question on the ground of—— [119]

The Court: The objection is sustained, and you may inquire if he has sufficient knowledge to give the answer to the question you want to ask.

Q. (By Mr. Broz): Mr. Martin, can you state from your experience and knowledge of the area shown on the chart in the vicinity of Pier 57 in Elliott Bay——

Mr. Morrow: I would like to make another objection.

The Court: The objection is sustained. It would be competent to ask this witness to consider things that you think are officially available to him there on the witness stand in front of this witness, it would be proper to ask the witness to examine those documents if you think they are public documents

(Testimony of William M. Martin.)

and those exhibits if they are in the record and then ask him does he have knowledge about such and such a subject. If his answer seems to qualify him for the answer to the question you wish to propound, then propound the question.

Q. (By Mr. Broz): Mr. Martin, please examine the cable area shown on the chart marked 6449, Coast and Geodetic Survey Chart 6449, with reference to the cable area appearing off Pier 57. Are you familiar with that area on the chart?

A. Yes, sir, I am. [120]

The Court: Do you mean is he personally familiar with it by his official experiences?

Q. (By Mr. Broz): Does your experience familiarize you with the area off Pier 57?

A. Yes, sir, it has so far as the chart is concerned.

Q. Can you state from examining that chart the distance off Pier 57 which the red lines indicating a cable area extend into the bay?

Mr. Morrow: I wish to object. The chart speaks for itself. There's the marked cable area which the witness has identified.

The Court: The objection is overruled. It is competent to hear an official say what his understanding of the information is and what information he gets from the chart, in my opinion. Therefore, the objection is overruled.

A. The distance——

The Court: Just a minute. Read the question,

(Testimony of William M. Martin.)

Mr. Reporter. Have in mind the specific form of the question, Mr. Martin, and answer that.

(The reporter read the last question.)

The Court: Answer directly.

A. Approximately 420 yards.

The Court: Read the question and the answer for the Court's reminder and for the reminder of all [121] others present.

(The reporter read the question and answer as follows:

"Q. Can you state from examining that chart the distance off Pier 57 which the red lines indicating a cable area extend into the bay?

"A. Approximately 420 yards.")

Q. (By Mr. Broz): Can you state how far the cable area indicated on the chart extends into the bay from the head of Pier 57?

The Court: Was that 450? What was the denomination?

A. Approximately 420 yards, your Honor.

The Court: Yards. You may proceed.

A. From the head of Pier 57 that distance is approximately 450 yards.

The Court: What is it that is 450 yards distant from some place?

A. From the head of Pier 57.

Q. (By Mr. Broz): Is that the inshore head?

A. No, sir, that is the offshore head. The other distance that I gave you is offshore, but the line of the shoreline runs in a diagonal towards the northwest.

(Testimony of William M. Martin.)

The Court: Is this a pier head that you are [122] talking about as a point from which or to which you are making a measurement now?

A. It's the outer or western limit of the pier.

The Court: Is it sometimes referred to as the outer pier head or as an outer limiting or specifying description or does the outer specifying description have any meaning at all?

A. No, sir.

The Court: What is it, then?

A. It's the actual limit of the pier, your Honor.

The Court: Pardon?

A. The actual north or west limit of the pier, from the actual pier end.

The Court: Do you mean from the dry land on the bank?

A. No, sir, from the offshore end.

The Court: To the end of the pier it is so many feet or yards, is that what you are saying?

A. No, sir. The thing I'm saying is that the cable area as shown on this chart extends approximately 450 yards west from the west end of Pier 57.

The Court: Is the west end the so-called seaward end of the pier? [123]

A. Yes, sir, it is.

The Court: You may inquire.

Q. (By Mr. Broz): Are you familiar with the soundings that appear on that chart, Mr. Martin?

A. Yes, I am.



(Testimony of William M. Martin.)

Q. And you are familiar with the way that they are recorded?

A. Yes, I am.

Q. And what do those figures represent?

A. The depth of water in feet.

Q. What—

A. At mean lower low water, which is the charting datum in this chart.

The Court: Mean lower low water?

A. That's correct.

The Court: The mean lower low water depth of what, of the water?      A. The water.

The Court: Of the bay?

A. That "mean lower low water" terminology is a term applied to tidal datum, being the result of the mean of all the tides over a period of years.

Q. (By Mr. Broz): Would it be necessary, Mr. Martin, to determine the depth of the water appearing on that chart at a given time during the day to add the actual tide depth at that particular time of day? [124]

A. Yes, sir, it would.

Mr. Broz: Mark this for identification, please.

The Clerk: It will be marked Libellant's Exhibit No. 2.

(Certified copy of tidal record was marked Libellant's Exhibit No. 2 for identification.)

The Court: It would seem to me that Counsel ought to be able to agree upon the admissibility of documents like this. Here is a document that is a

(Testimony of William M. Martin.)

certified copy of a public record. It ought to have been already indicated that——

Mr. Broz: It has been, your Honor. The purpose is simply to have this witness identify it for the record.

The Court: What do you call it? Give it a name that both——

Mr. Broz: Tidal record, your Honor.

The Court: Tidal record.

Mr. Morrow: It is agreed it may be admitted, your Honor.

The Court: Do you offer it?

Mr. Broz: I will offer it, your Honor.

The Court: It is admitted.

(Libelant's Exhibit No. 2 for [125] identification was admitted in evidence.)

Q. (By Mr. Broz): Mr. Martin, examining what has been marked as Libelant's Exhibit No. 2, state what it is.

A. This is a certified copy of the tabulation of the hourly heights of tides from the tide station at Colman Dock in Seattle.

Q. For what day?

A. For March 21, 1955.

Mr. Broz: You may examine.

The Court: At Colman Dock, was that the answer?

The Reporter: Yes, your Honor.

The Court: That is not Pier 57, is it Mr. Martin?

A. No, sir, it's not. That's Pier 52.

(Testimony of William M. Martin.)

The Court: Pardon? A. That is Pier 52.

The Court: You may proceed.

Mr. Morrow: May I see Respondent's Exhibit—

The Court: You may do that. Mr. Martin, what is the number of the so-called Port of Embarkation pier? The pier known as the Port of Embarkation during World War II, what is the number of that pier, if you know?

A. Pier 39, I believe, your Honor. [126]

The Court: You may inquire.

Mr. Morrow: May I see both exhibits, please?

The Court: That will be done.

Mr. Morrow: Respondent's Exhibit No. A-1 and Libellant's Exhibit No. 2.

(The exhibits were handed to Mr. Morrow.)

### Cross Examination

Q. (By Mr. Morrow): Referring you to Libellant's Exhibit 2, does this show the actual height of the water hourly between the hours of 1200 and 1600 on March 21, 1955 at the Colman Dock?

A. Yes, sir, it does, on the hour.

Q. The height would be approximately the same at these hours at Pier 64, would it?

A. I believe by the proximity of the piers that the height would be essentially the same.

Q. Does this indicate a period of flood tide?

A. Yes, sir, I believe it will.

Q. And in order to determine the actual depths from the level of the water to the bottom you would

(Testimony of William M. Martin.)

add your soundings on the chart to the depth of water indicated hereon, would you?

A. In order to determine the depth of water as shown on the chart at any particular stage of the tide you must [127] add the stage of tide.

Q. Now, what is 1500 in standard time?

A. 1500 in standard time would be 3:00 p.m.

Q. And the exhibit shows 9.3 feet opposite 1500, which would be 3:00 p.m. standard time. Now, to get the actual depth of the bottom you would add the 9.3 to the soundings as indicated on the chart, would you? A. That is correct.

Q. For example, if you had a 180 feet sounding on the chart, Mr. Martin, to get the actual depth you would add 9.3 to that?

A. That is correct.

Q. That would then give you 189.3?

A. I believe you're right.

Q. Using the 180 on the chart, would it?

A. I believe that would be right.

Q. Now with reference to 1600, what time is that in standard time?

A. 1600 is 4:00 p.m.

Q. And there is indicated a height of feet of 8.7, and would it likewise be true that you would add 8.7 to determine the actual depth of the bottom? A. That is correct.

Q. At 1600 or 4:00 p.m. Seattle time?

A. That is correct. [128]

Q. Now, referring you to Respondent's Exhibit A-1 and your testimony that the cable area is

(Testimony of William M. Martin.)

marked by two red lines, the northerly boundary of the cable area extends out from the pier head of the south side of Pier 58, does it not?

A. I believe that's right.

(Respondent's Exhibit A-1 was handed to the witness.)

Q. Now would you please give me the following distances: The distance from the sea wall at the outside of Pier 58 to the westerly end of the line marking the northerly cable boundary.

A. I believe that would be approximately 580 yards, from the sea wall.

Q. Very well. Now would you give me the distance along the same northerly boundary from the pier head of Pier 58 to the westerly end of the northerly boundary?

A. That would be approximately 420 yards, possibly slightly more.

Q. 420 is as accurate as you can measure it?

A. Approximately, yes.

The Court: From what point to what point, please?

A. From the pier head line of Pier 58.

The Court: What is the pier head line? [129]

A. That's the outer limit of the——

The Court: Is that the farthest building inch of space on which an object could rest on the farthest seaward end of that pier?

A. That is my belief.

The Court: And the distance from that point westerly, is it, into the bay?



(Testimony of William M. Martin.)

A. Westerly into the bay.

The Court: Is how far?

A. Approximately 420 yards.

The Court: What is the difference between that point and the 450 yards distance you stated originally as to 57? Is there any difference other than the fact that the distance is the same at Pier 58 as it was in the relative distance as to Pier 57?

A. Due to the fact that the shoreline and the pier head lines are parallel and the shoreline runs in a northwesterly direction it would be necessarily further west.

The Court: Which is farther west, 57 or 58, the end of the piers out into the sound?

A. Pier 58, your Honor.

The Court: You may inquire.

Mr. Morrow: May I see the chart, please.

The Court: May I ask you, Mr. Martin, what [130] difference does that make so far as room for necessary or needful maneuvering to a ship trying to land at the dock in a rough March wind?

A. Your Honor, I'm not a mariner. I couldn't answer that question.

The Court: You may inquire.

Q. (By Mr. Morrow): Now would you just draw a pencil line between the cable area extending from the westerly end of the northerly cable boundary and the westerly end of the southern cable boundary? Just draw a pencil line there.

The Court: In this distance I suspect that this is developing into the same kind of a situation as



(Testimony of William M. Martin.)

all other situations involving paper exhibits and other exhibits do in every trial that I have presided over up to this time. We spend more time trying exhibits than we do in trying the factual issues. If we could just devote our time to asking the witness for his information based on an orally stated question and then let the record show his orally stated answer, then all of us could understand what he said without having to look at something and taking the responsibility of getting the same information and having in mind the same conditions which another viewer of the exhibit would have. We are supposed to all know and understand the same [131] English spoken words. If we could just have all this information stated in words or figures from the mouth of this witness it would be much more certainly understood by all. You may proceed.

Q. (By Mr. Morrow): Now, the line that you have drawn indicates the westerly boundary of the cable area, does it not?

A. It indicates——

Q. As marked on the chart?

A. That is correct, it does, as marked on the chart, though not necessarily the end of the cable area.

Q. That's right. Now, Mr. Martin, when you took your measurements in the first instance you took a measurement from the head of Pier 57 to the westerly end of the northern boundary as marked on the chart, didn't you?

(Testimony of William M. Martin.)

A. I took the distance from the westerly end of Pier 58 to the——

Q. Well, you did on my questioning, that's true, but I'm talking about on your direct examination.

A. No, sir, on the direct examination I did the same thing.

Q. Now, to do it correctly shouldn't you take the measurement on the perpendicular from Pier 57 to that line you have drawn on the chart?

A. If you were to get the distance from Pier 57, you're [132] correct.

Q. That's right. Now, would you do that?

A. That distance is somewhere approximately 440 to 450 yards from Pier 57. That is in a direct westerly line.

Mr. Morrow: May I see the exhibit, please.

(Respondent's Exhibit A-1 was handed to Mr. Morrow.)

A. That is the southern side of Pier 57.

The Court: State the limits of that distance again.      A. 440 to 450 yards.

The Court: Between what points, the limits, the terminal points of the distance?

A. From the south side of Pier 57 to the westward limit of the cable area as shown on the chart is 440 to 450 yards.

Q. (By Mr. Morrow): 415?      A. 450.

Q. Would you check that again, please?

The Court: You see here again you are devoting time to trying the chart. All the Court and all Counsel, I am sure, are interested in is having

(Testimony of William M. Martin.)

the Court advised as to what the distances are. You do not have to spend any time proving or unproving a map or an exhibit [133]

Mr. Morrow: No, but I want a correct interpretation of the witness' testimony.

The Court: The only reason why you need it is because there is a discussion of a thing that if it were not in the case at all you could go on avoiding it, you would not have to bother with the chart. All we want is the information.

(Respondent's Exhibit A-1 was handed to the witness.)

Q. (By Mr. Morrow): Now, what is the distance from the most westerly tip of Pier 57 to the westerly boundary of the cable area?

A. From the most westerly tip it would be something just over 420 yards.

Q. 420 yards is as accurate as you can measure it?

A. 420, 425. It's something a little bit more.

Q. Very well.

The Court: What are the terminal points in that distance measurement?

A. From the most westerly point, which would be the northwest——

The Court: Northwesterly point of what?

A. Of Pier 57, to the westward boundary of the cable area as shown on the chart.

Mr. Morrow: I would like this marked as an [134] exhibit.

The Court: Let it be marked.

(Testimony of William M. Martin.)

The Clerk: It will be Respondent's Exhibit A-2.

(U. S. Coast and Geodetic Survey Chart No. 6449 was marked Respondent's Exhibit No. A-2 for identification.)

Mr. Morrow: This is an exhibit produced during the pretrial conference.

The Court: Do you offer it in evidence?

Mr. Morrow: It was produced during the pretrial conference, isn't that right? Didn't you produce it?

Mr. Broz: It was produced, but it was not——

Mr. Morrow: That's all I said, it was produced.

The Court: Do you offer it in evidence?

Mr. Morrow: Yes, I want to offer it in evidence.

The Court: Is there any objection to it?

Mr. Broz: Yes, your Honor, at this time, until its relevancy is established.

The Court: You may proceed. It is another exhibit bearing the same number as does Exhibit A-1. In other words, it bears the C. and G. S. No. 6449. It has some colored shading at one place on the map. Proceed.

Q. (By Mr. Morrow): Is Respondent's Exhibit A-2 a chart [135] of the area in question corrected to March, 1955?

A. That's correct, Mr. Morrow.

Q. Basically, disregarding any markings on the two charts, they are identical, are they not?

A. I believe they are.

Q. And did you prepare this exhibit?

(Testimony of William M. Martin.)

A. I prepared the part which is not an integral part of the chart itself.

Q. That's what I mean. Did you put a 180 foot curve from soundings on this chart, Respondent's Exhibit A-2?      A. Yes, sir, I did.

Mr. Morrow: I will offer the exhibit in evidence.

Mr. Broz: Objections, your Honor. The relevancy hasn't been established.

The Court: In what respect is it relevant?

Mr. Morrow: The relevance, your Honor, the evidence will show that the Princess Louise on the occasion in question in making a landing at Pier 64 dropped its starboard anchor to 30 fathoms, which is 180 feet, and this exhibit and this witness will testify as to the 180 foot curve of soundings as shown on the chart. Of course, it may be part of my case. I'm willing to withdraw the witness at this time and recall him later if that is desired.

The Court: That will be done. Is there any further cross examination you wish to ask of him?

Mr. Morrow: No. I would like to get this evidence in because it's going to be necessary in connection with further testimony. I will produce that evidence, and there is no question about it.

The Court: The Court will not change the procedure. The Court will not rule upon its admission until that further evidence is adduced.

Mr. Morrow: I will ask Mr. Martin to—or let me check for just a moment and see if I have finished the cross examination.



(Testimony of William M. Martin.)

The Court: You cannot do it until you have reached your case in chief.

Mr. Morrow: Yes. Very well, that's all the cross examination I have at this time.

The Court: You may step down.

(Witness excused.)

Mr. Morrow: Was this exhibit admitted or not?

The Court: No, the Court said it will not be admitted until we hear the further testimony which cannot be heard until we reach the respondent's case in chief. Call the libelant's next witness.

Mr. Broz: Sergeant Charles B. O'Brien.

The Court: Come forward, Mr. O'Brien, and be [137] sworn as a witness.

CHARLES B. O'BRIEN,

called as a witness in behalf of libelant, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Broz): State your name, address and occupation, please.

A. My name is Charles B. O'Brien, 3812 East Mercer Way, Mercer Island, Washington, and my occupation is the chief cost accountant for the Alaska Communication System, United States Army.

Q. What is your rank?

A. My rank is Sergeant First Class.

Q. What are your duties generally as chief cost accountant for the Alaska Communication System?



(Testimony of Charles B. O'Brien.)

A. Maintaining an accounting structure that will resemble and signify the cost of operations of the system as to maintenance and operation and the cost of all new construction and project work orders.

Q. Do you have any special qualifications for your position?

A. I have had twenty years experience in the accounting field, and this maintaining a high school education, in business I have finished a La Salle Extension University course in higher extension in CPA training and have [138] specialized in cost accounting as it pertains to public utilities, both as to the power and telephone.

Q. Have you worked on any special projects in your field?

A. Yes, I have. I have worked on several special problems in this field. I've worked on establishing rates, which we consider a rate study, for telephone and telegraph for the Alaska Communication System. I have worked on rates of interconnecting companies as to what charges will be charged to those, and then in addition to that have prepared manuals and written manuals pertaining to this type of work.

Q. Are those manuals used by the Alaska Communication System?

A. Yes, they are used by the Alaska Communication System both as to the general accounting aspect of it including the fixed assets and operating expenses and revenue and a performance

(Testimony of Charles B. O'Brien.)

basis, and on the separations procedure as to toll and exchange they are used by the independent companies within Alaska, and at the time it was prepared the Pacific Telephone & Telegraph Company here in Seattle asked permission to reproduce the charts that I prepared for incorporation within their own manuals.

Q. Were you acting in your capacity as chief cost accountant for the Alaska Communication System during the year 1955?

A. Yes, sir. [139]

Q. What projects were you engaged in with relation to your official duties during 1955?

A. I was engaged in the project of preparing the cost of all specific jobs and also the job pertaining to the cable break of the Fort Lawton-Seattle cable.

Q. When did you work on that particular project?

A. I worked on that particular project from the month of March to the completion of the data to be submitted to me, and the closing date of that accounting period was the 31st day of March, and——

The Court: What year, please?

A. 1955, sir.

The Court: So you began on what date in March?

A. This specific job began the 23rd of March, sir, 1955.

The Court: And it ended when?

(Testimony of Charles B. O'Brien.)

A. It ended the 29th day of March, 1955.

Mr. Broz: Mark this for identification, please.

The Clerk: It will be marked Libelant's Exhibit No. 3.

(A job order cost sheet was marked Libelant's Exhibit No. 3 for identification.)

Q. (By Mr. Broz): Mr. O'Brien, will you please examine what has been marked Libelant's Exhibit No. 3 for identification and state whether or not you recognize it? [140]

A. Yes, I do.

Q. What is it?

A. This is a job order cost of the cable break, the Seattle-Fort Lawton cable break.

Q. What date?

A. Inclusive 23rd and 29th March, 1955.

Q. Did you refer to it as a ledger?

A. Yes, sir, it's a job order ledger sheet.

Q. Was this ledger sheet prepared by you?

A. Yes, it was.

Q. Is it the original which was prepared by you? A. Yes, it is.

Q. Was this ledger sheet prepared in the regular course of business of Alaska Communication System? A. Yes, it is.

Q. And was it the type of record which was regularly produced by the Alaska Communication System in the regular course of business?

A. Yes, it was.

Q. Is this a government record?

(Testimony of Charles B. O'Brien.)

A. Yes, it is a government record.

Mr. Broz: I will offer the exhibit, may it please the Court.

Mr. Morrow: I object to the exhibit. It's in the nature of a secondary document, and for the [141] further reason that up to this time there has been no foundation for this type of testimony. There has been no evidence in the case at all that repairs were made. For the further reason that it is not obviously a record kept in the usual course of business but it was something that was prepared later in connection with a special job, and for the purpose probably for presenting a claim. Perhaps if original entries were introduced supporting the conclusions here I might not have any objection. It's the first time I've seen the document, and the fact that it isn't connected with any evidence showing repairs I think makes it highly objectionable at this time.

The Court: As I understand it it is an expert's analysis based upon certain fundamental basic information which this expert used in making up this, which fundamental supporting data is not now brought forward and with respect to which opposing Counsel is given the opportunity of cross examination. Where is that material and what is the need for this expert form of information for the benefit of the fact trier?

Q. (By Mr. Broz): Sergeant O'Brien, did you in the course of preparing that document have reference to other records of the government?

(Testimony of Charles B. O'Brien.)

A. In preparing this document, this is a basic accounting [142] document——

The Court: Just a minute. I am afraid you are not going to make a responsive answer. The question ought to be answered yes or no.

A. Yes.

Q. (By Mr. Broz): And are those records available to you now?

A. The source document is not available at this time.

Q. Why not?

A. And the reason for that being is being governed by Army regulations the source documents are not to be kept longer than one year, then they are to be destroyed and substituted therefor this permanent record which the accounting of the government accepts as essential.

Q. What is the purpose of that record?

The Court: Let it be made certain and very clear what is the fact now and not what may have been done at some other time. We wish the final information as to whether or not what was done usually was done in this case. The last two questions and answers do not sufficiently bring that out.

Q. (By Mr. Broz): Sergeant, at the time that you prepared that document did you have reference to other government records?

A. Yes, I did. [143]

Q. And how did you go about preparing this particular document?

A. This particular document was prepared from



(Testimony of Charles B. O'Brien.)

individual time sheets prepared and submitted by each individual on the Alaska Communication System, which included the submarine cable ship, the Basil O. Lenoir, and in addition to that we had subsistence documents which came from the ship, and I personally went aboard the ship and went over their records as to materials used in this specific job.

Q. Does that document before you represent a summary of the information which you gathered from these other documents?

A. Yes, it does.

Q. And are those other documents now destroyed? A. Yes, they are.

Q. They are no longer available to you in any way, shape or form? A. They are not.

Q. And when was that document prepared?

A. This document was prepared the 4th of June of 1955.

Q. And has it been in your custody since that time? A. Yes, it has.

Q. And are you the custodian of that document now? A. Yes, I am. [144]

The Court: It would be competent to ascertain for what purpose it was made.

Mr. Broz: Yes, your Honor.

The Court: And in particular upon a proper form of question whether or not at the time it came into being it did then and there become an official record and, if so, what with reference to its being or not being an official record has been done with



(Testimony of Charles B. O'Brien.)

it with respect to use and custody since then until now.

Q. (By Mr. Broz): For what purpose was the record made?

A. The record was made——

The Court: You are talking about this Exhibit 3, are you, Libellant's Exhibit 3?

A. Yes, sir. This record was made in our regular course of business, which in the cost accounting——

Mr. Morrow: Objected to as not responsive.

Mr. Broz: He hasn't finished yet.

The Court: The objection is overruled. I wish he could be given an opportunity to say when he did that. Of course he cannot say everything in one word.

Q. (By Mr. Broz): When did you prepare that document, Sergeant?

A. I prepared this document during the month of May.

Q. Which year? [145]                      A. 1955.

Q. What was done with it after you prepared it?

A. After I had prepared this document—we maintain this particular type of ledger sheet in a special ledger, and that is called our plant work order and new construction ledger. At that time when a project is complete, a job, we decide at that time on an analysis whether this is a capital expenditure or a revenue expenditure.

The Court: Wait just a minute.

A. If it is——

The Court: Go ahead, finish your statement.

(Testimony of Charles B. O'Brien.)

A. If it is a revenue expenditure, then we transfer this amount of the job to our operating expenses for the Alaska Communication System, which this job was transferred to our operating expenses at that time.

Q. (By Mr. Broz): This was carried, the summary was carried as an operating expense of the Alaska Communication System at that time?

A. It was incorporated into the operating expenses at that time.

The Court: I do not understand. That question and answer are not clear to the Court. Read the question.

(The reporter read the last question.)

The Court: Do you mean the making of this thing which is here as Libelant's Exhibit 3, is that [146] what you mean, Counsel?

Mr. Broz: No, your Honor.

The Court: State a question so the record, not only what Counsel has in mind, but the record will show a true and accurate reflection of what is meant.

Q. (By Mr. Broz): What use was made of this record after you prepared it in 1955, Sergeant? What ultimate use was made of the record?

A. This record was maintained so we could show from our records the cost of doing a specific job in reference to a repair item of the cable ship Basil O. Lenoir.

Q. And was this specific document an official record of the Alaska Communication System?

(Testimony of Charles B. O'Brien.)

A. Yes, it was.

Q. And is it maintained as such at this time?

A. It is maintained as such as of this date because we have other records and other jobs of the same nature.

The Court: The witness way back in his testimony since being interrogated about the authentication of this document said that as soon as the project was completed, and I asked what project he meant when he said those words or in substance used those words, does he mean the cost studies that he made or the studies of the costs of making these repairs, or does he mean the project of doing the repairs, accomplishing them [147] after the studies had been made.

Q. (By Mr. Broz): What do you refer to, Sergeant, when you use the terminology "project," "when the project was completed"? What do you refer to?

A. I refer to a job that is being done——

The Court: What is the job here?

A. The job is the repair to the Fort Lawton submarine cable job. When that job was completed——

The Court: Was it completed?

A. Yes, sir.

The Court: When?

A. It was completed on the 29th day of March, 1955.

The Court: I still am not certain whether the witness at the time he used the words that the

(Testimony of Charles B. O'Brien.)

Court felt in doubt as to the meaning of, I still am in doubt as to whether he meant the project of making up this cost study or the project which was undertaken by a contractor or a series of contractors to make repairs which were necessitated, if they were, by the damaged cable in question.

Q. (By Mr. Broz): Sergeant, when did you make that record?

A. This record was posted from the source documents in the month of May of 1955.

Q. And is that with reference to the Seattle-Fort Lawton [148] submarine cable repair job in 1955?

A. Yes, it is.

Q. Was that record completed after the job which you referred to, the cable repair itself, was effected?

A. This record was completed after the job had been completed.

Q. And what does the record reflect?

A. The record reflects the cost of the repair of the Fort Lawton-Seattle submarine cable during the period of 23 to 29 March 1955.

Q. From other source records?

A. Yes, sir.

Q. And are those other source records available now?

A. No, sir.

Mr. Broz: I'll offer the exhibit, your Honor.

Mr. Morrow: I would like some voir dire.

The Court: No, the Court declines to extend that. Do you have any objection to the offer?

Mr. Morrow: Well, I would like to——

(Testimony of Charles B. O'Brien.)

The Court: We have spent so much time on this and the Court is ready to rule upon it. The Court feels that enough has been said for the Court to intelligently rule upon it, and that does not mean the Court is going to admit it, it just means that I think I am able to rule upon it, that is all it means. The [149] Court declines to extend the opportunity of voir dire and advises Counsel offering it that the Court thinks that this illustrates what the Court has said here before this morning, that we spend in a situation like this a lot more time than the thing is worth. All you need to do is ask this witness for his information to be stated orally as to what these costs of repairs would be if he has any opinion or information regarding it if it is competent evidence, and after he gets all through, if there is anything further needed to further demonstrate or illustrate his testimony, possibly this exhibit might illustrate something he said and it might be admissible as illustrative and for the purpose only of characterizing his testimony when it could not possibly be introduced in evidence or received in evidence as independent and direct evidence of the things contained therein.

At this time we will take about a ten minute recess.

(Short recess.)

The Court: You may proceed.

Q. (By Mr. Broz): Sergeant O'Brien, in the course of your official duties did you conduct a cost analysis of the Seattle-Fort Lawton cable re-



(Testimony of Charles B. O'Brien.)

pair job in March of 1955? A. Yes, I did.

Q. Describe briefly what you did in preparing your cost analysis of the repair job.

A. In preparing the cost analysis of the Seattle-Fort Lawton break we accumulated the costs of labor from individual time sheets. I personally went down to the cable ship——

The Court: Counsel, may I tell you that I do not care a thing about this thing until I hear some evidence from this witness as to what the fact is. If this witness found any facts which he recorded in this exhibit, why is it that he cannot testify directly as to his knowledge now by word of mouth?

Q. (By Mr. Broz): What facts did you find, Sergeant O'Brien——

The Court: Just ask him something about the facts.

Q. (By Mr. Broz): Did you prepare a cost analysis of the Seattle-Fort Lawton cable repair job in 1955? A. Yes, I did.

Q. And in the course of your preparation of that cost analysis did you find certain facts which were included in your cost analysis?

A. Yes, I did.

Q. What did you find with regard to the cost analysis preparation of this repair job?

Mr. Morrow: Objected to on the ground that [151] the question calls for hearsay evidence.

The Court: The objection is overruled.

A. I found that the cost of the repair of the Seattle-Fort Lawton submarine cable amounted to



(Testimony of Charles B. O'Brien.)

\$6,954.23 direct cost, this being compiled from the—

The Court: Just a minute. There is nothing before you. Ask him another question.

Q. (By Mr. Broz): How was that figure arrived at, Sergeant?

A. That figure was arrived at from labor records, the ship's records, which I personally went down and audited on the job, and subsistence that was aboard the ship, in arriving at this figure. These are direct costs only.

Mr. Morrow: Objected to and move that it be stricken on the ground that it's not the best evidence.

The Court: Overruled and denied.

Q. (By Mr. Broz): After arriving at the figure of \$6,954.23 what did you do with that figure?

A. I transferred that figure to the expense ledger for the Alaska Communication under the account Repairs to Submarine Cable.

Q. What was done with that?

The Court: Does that have an exhibit number in this case, that thing you last referred to? Read his answer and see if it will remind him of the thing the Court is referring to. [152]

(The reporter read the last answer.)

The Court: The expense ledger, has that thing been marked as an exhibit with an exhibit number, Mr. O'Brien, in this case? A. No, sir.

The Court: Proceed.

Q. (By Mr. Broz): Is that the document that

(Testimony of Charles B. O'Brien.)

has been previously handed to you and described as Libelant's Exhibit No. 3?

A. Yes, it is.

Q. What was the purpose of your transferring that figure to that record?

A. The purpose of transferring it is that this is a maintenance item and not a capital item.

Q. Is it an official record?

A. Yes, it is.

Q. Is it an official record of the Alaska Communication System?      A. Yes, it is.

Q. Does it appear as a direct charge against the Alaska Communication System operational account for the year 1955?      A. Yes, it is.

Mr. Broz: I'll reoffer the exhibit.

Mr. Morrow: The same objection. [53]

The Court: The objection is overruled. Libelant's Exhibit 3 is now admitted.

(Libelant's Exhibit No. 3 for identification was admitted in evidence.)

Q. (By Mr. Broz): Have you had an occasion to prepare a cost analysis representing the cost of operation of the cable ship Lenoir?

A. Yes, I have.

Q. For what purpose did you conduct that cost analysis?

A. I conducted that cost analysis to arrive at a daily charter figure if and when the vessel was to be leased to other governmental agencies or commercial concerns.

Q. When did you prepare that cost analysis?

(Testimony of Charles B. O'Brien.)

A. I prepared that cost analysis in November of 1954.

Q. And did you arrive at a daily operational cost of the vessel?      A. Yes, I did.

Q. What was that figure?

A. That figure was \$1,500 a day.

Q. Do you know whether the Lenoir was subsequently chartered on the basis of your cost analysis?      A. Yes, I do.

Mr. Morrow: Objected to as immaterial.

Mr. Broz: It will be related at a later time.

Mr. Morrow: As to whether they chartered the [154] vessel at that figure.

The Court: Did you hear the statement of the promise?

Mr. Morrow: Yes, your Honor, but that subsequent chartering of the Basil Lenoir to another party could not possibly establish the reasonable charter rate for the vessel.

The Court: I do not hear a question that calls for him to state the information objected to. The objection is overruled. I understood the question related to some kind of a record.

Q. (By Mr. Broz): In arriving at the daily operating expense of the cable ship Lenoir did you include any other item in arriving at that computation other than items of cost?

A. No, sir.

Q. Did you include an item of profit?

A. No, sir.

The Court: Would Counsel remind the Court of

(Testimony of Charles B. O'Brien.)

the use he intended to have made as evidence of the \$1,500 information that you asked this witness about a moment ago? Are you seeking to authenticate a document for admission in evidence or in mentioning the sum of \$1,500 did you do so in connection whereby you wished to adduce direct information of a recoverable item of [155] damages in this case?

Mr. Broz: Your Honor, the witness' testimony was sought simply to elicit that he did prepare a cost analysis in 1954 and did arrive at the operating value of the vessel through his cost analysis. Other witnesses will testify that the vessel was subsequently chartered on the basis of that cost analysis which was made in 1954.

The Court: Did he mention the sum which he determined?

Mr. Broz: I believe he did.

Mr. Mikkelsen: He did.

Mr. Broz: He did, your Honor, \$1,500.

The Court: I think the Court should not hear that until we find out what sources of information he considered without giving what the information was, the sources and the nature of the information and the extent of it, and so the Court is advising Counsel on both sides that the Court will give no consideration to any sum of \$1,500 unless and until it is substantiated by another question and another answer propounded to this witness after and only after this witness has been qualified properly to give that information.

(Testimony of Charles B. O'Brien.)

Mr. Broz: Very well, your Honor.

Q. (By Mr. Broz): Sergeant O'Brien, did you arrive at a [156] daily operational cost of the cable ship Basil O Lenoir? A. Yes, I did.

Q. When did you compute that cost?

A. I computed that in November of 1954.

Q. Did you work on that subsequently?

A. Yes, I did.

Q. Will you describe your accounting procedure in arriving at the figures that you did in your cost analysis?

A. The elements that were considered in arriving at this daily cost was the labor of the ship at full complement, the fuel used, the subsistence used, the supplies and materials, expendable supplies and materials used aboard the ship to operate it.

Q. What was the source of your information?

Mr. Morrow: May I have that answer back again, please.

The Court: It will be given. It will be read by the reporter.

(The reporter read the last answer.)

The Court: You may proceed with another question.

Q. (By Mr. Broz): Was this particular cost analysis performed in the regular course of your duties? A. Yes, it was.

Q. For what purpose? [157]

A. It was prepared on the basis that I had been notified——

The Court: No, no, for what purpose.

(Testimony of Charles B. O'Brien.)

A. For subsequent charter of the vessel.

Q. (By Mr. Broz): Were you ordered to prepare such a report?      A. Yes, I was.

Q. By whom?

A. By the commanding officer.

Q. What was the source of the information which you used in arriving at the daily operational cost of the cable ship? What was the source of the information which you used in arriving at that determination?

A. The source was the labor to operate the vessel while it was——

Q. How did you get those figures?

A. I arrived at those figures by our individual time sheets, by the materials——

The Court: No, did you talk to anybody to get that information?

A. I personally made visits——

The Court: Just answer yes or no.

A. Yes.

The Court: Did you read a book or study any materials that were expected to be consumed in performing the service involved in the charter rate or value of the vessel? [158]

A. Yes.

The Court: Ask him what else he did.

Q. (By Mr. Broz): Did you——

Mr. Morrow: Your Honor, I would like to make an objection and a motion.

The Court: You may make the objection now.

Mr. Morrow: I would like to object to any



(Testimony of Charles B. O'Brien.)

further inquiry as to operational costs of the vessel prepared in 1954 as being irrelevant and immaterial to any damages sustained in 1955 and move that the witness' testimony in respect to the operational costs of 1954 be stricken.

The Court: What response do you make to that?

Mr. Broz: The witness has already stated that he worked on the report after 1954 and 1955.

The Court: What have you to state as a direct reason for the materiality of a 1954 situation with respect to this situation here in 1955?

Mr. Broz: If it please the Court, the evidence will show that this vessel of which the cost analysis was made was subsequently chartered in 1956 on the basis of the figures which were computed in 1954, worked on in 1955 and verified in 1956.

The Court: Do you promise to or do you not promise to show that the information regarding the [159] situation in 1954 will be related to the situation here involved and will be established to be the same?

Mr. Broz: The Governments expects to do so, your Honor.

The Court: The objection is overruled and the motion is denied, and if it is not done, if the promise is not performed, you may renew the objection and motion.

Q. (By Mr. Broz): Did you have access to other records in arriving at the figures which were utilized in preparing your cost analysis?

A. Yes, I did.

(Testimony of Charles B. O'Brien.)

Q. What records were those?

A. Those were the ship's records and shipping documents and travel orders coming through my office in the normal operation.

Q. Did you receive that information in the regular course of your duties?

A. Yes, I did.

Q. Where did you go in preparing this cost analysis? Did you visit particular offices or the cable ship itself?

A. Yes, I did. I visited the cable ship itself, I visited the plant and engineering office, I also visited the General Counsel's office and the procurement and distribution, which is a supply activity within the Army, and my own office and records down there in computing this [160] daily cost.

Q. And what information did you receive as the result of your visits to these various offices and places?

A. The information that I had received from those offices is the verification of the computed cost, daily cost of operating the ship and their scrutinizing those figures to the best of their ability on the operation of the ship.

Q. When did you start this cost analysis, this particular cost analysis?

The Court: One specificity that the Court has in mind suggesting that Counsel should have in mind is one that might be properly illustrated by this: If he was trying to ascertain in this cost study

(Testimony of Charles B. O'Brien.)

for the purpose of forming an opinion whether this charter party was based upon in part certain cost items, such as fuel oil or fuel consumption, it might be related to this kind of a situation. If he was investigating the cost of bicycles on a certain day or some other common merchandise article he might be asked such a question as might elicit the information that he consulted among other things a Sears, Roebuck catalogue.

What the Court needs to know in order to qualify this witness' finding on this matter is what specific sources of information came to his attention [161] and were considered by him in forming his conclusion.

I do not see what else I can say. It is a common thing, it is inherent in a study of any kind, the results of which can be adduced properly as testimony in a trial in court. Proceed.

Q. (By Mr. Broz): Sergeant O'Brien, what items did you take into considering in arriving at the daily operational cost of the cable repair ship?

A. The items that was considered are the items to operate this ship in a normal course of one day.

Q. Do you recall offhand what some of those items were?

A. Some of those items are the labor involved, the subsistence, the fuel oil, the lube oil——

The Court: Whom did you talk to or what did you see in the way of written data about that labor cost?

A. We computed the labor cost and we have

(Testimony of Charles B. O'Brien.)

past information recorded on our ledger for a yearly operating cost of the ship which we referred to.

The Court: There must have been something that you looked at or some person you talked to about that labor item. Who and what was it?

A. The labor is submitted by each individual and we compute and extend the hours——

The Court: What individuals?

A. The individuals of the cable ship. [162]

The Court: Do you mean the persons in the crew of the cable ship or the paymaster on the cable ship that pays the wages? What do you mean?

A. Individuals employed on the cable ship for labor submit a semimonthly individual labor record to the cost accounting section for labor expended on the cable ship.

The Court: That does not say a thing, Mr. Broz, and this is the last suggestion that I am going to make in the matter. The witness does not directly give any information. The tendency of the witness is to make comments which are not direct answers to direct questions, and over these objections the Court will have to have a greater specification of the information. The Court will have to be at recess from a quarter before 12:00 until a quarter before 2:00. You may proceed.

Q. (By Mr. Broz): Sergeant O'Brien, with regard to labor as an item which you took into consideration in arriving at the cost analysis figures,

(Testimony of Charles B. O'Brien.)

you took into consideration the cost of labor, is that correct?      A. Yes.

Q. And did you receive certain records, documents which you used in arriving at the cost of the labor which you attributed to the operation of the Basil O. Lenoir? [163]      A. Yes.

Q. And where did you get those records?

A. From published hourly rates that we applied to the individual time sheets submitted by the individuals on the cable ship Lenoir.

The Court: As far as the witness' answer is concerned they might have been published by the Labor Department of the United States Government or they might have been published by the paymaster on board that vessel. It would be very interesting to know which, for instance.

Q. (By Mr. Broz): What published documents did you refer to, Sergeant?

A. The maritime rate.

The Court: That still does not say a thing in the world. I am going to withdraw this witness from the stand if he does not become more informative and direct in his answers. The Court will not be willing to indulge any substantial further time to a witness who refuses or in some manner circumvents the questions.

Q. (By Mr. Broz): Sergeant, when you refer to the maritime rate, what document do you refer to?



(Testimony of Charles B. O'Brien.)

A. I refer to the published rates within the ACS for the cable ship Lenoir.

Q. Is that information furnished you in connection with your official duties? [164]

A. Yes, it is.

Q. Do you know where those figures are arrived at? Do you know from where they are derived?

A. They are derived from the Wage Board of the Civil Service Commission.

Q. Did you examine the time sheets submitted by the employees of the ACS on the Basil O. Lenoir? A. Yes.

Q. Were they likewise furnished to you in the regular course of your duties?

A. Yes, they were.

Q. And did you later arrive at a figure using the maritime rate and the hourly record of employment of the employees on the Basil O. Lenoir?

A. Yes, I did.

Q. What other items did you use in the computation of your cost analysis?

A. I used the subsistence that would be furnished the ship when it was out.

Q. What do you refer to by "subsistence"?

A. Food.

Q. What was the source of your information regarding the food?

A. That was obtained from the ship's records.

Q. What ship records do you refer to? [165]

A. The Basil O. Lenoir ship records.



(Testimony of Charles B. O'Brien.)

Q. The log? A. Yes.

Q. Did you take into account the fuel oil consumption of the Lenoir? A. Yes, I did.

Q. Did you have access to records regarding fuel oil consumption? A. Yes, I did.

Q. What records did you refer to?

A. The ship's logs.

Q. Did the ship's logs relate the cost of the fuel oil to the vessel?

A. Yes, it did.

Q. Was that a chargeout likewise to the Alaska Communication System? A. Yes, it was.

Q. What other items did you take into consideration?

A. The expendable supplies aboard that ship.

Q. And what were expendable supplies?

A. Such as what they would use in the normal course, rags, tapes, and so forth, that they would need to maintain and operate the ship.

Q. And where did you get that information?

A. That came from the ship's supply records.

Q. What other information did you use in arriving at this computation?

A. That is all the information that was used.

The Court: At this time we will be at recess until 1:45, a quarter before 2:00 o'clock. Court is recessed until that time.

(Thereupon, at 11:45 o'clock a.m. a recess herein was taken until 2:00 o'clock p.m.)

(Testimony of Charles B. O'Brien.)

Wednesday, August 20, 1958, 1:45 o'clock p.m.

(All parties present as before.)

The Court: All are present. You may proceed.

Q. (By Mr. Broz): Sergeant O'Brien, again with reference to your cost analysis of the daily operational cost of the Lenoir in 1954, what items did you consider in your cost analysis?

A. I considered the items of labor, and in reference to labor it was the manning table which went to make up the ship's complement.

Q. Just list the various items that you considered, Sergeant, the labor——

A. The various items that I considered was labor [167] subsistence, fuel oil, expendable supplies, depreciation.

Q. Did you consider dry-docking and repairs?

A. And the dry-docking and repair part of the cable ship.

Q. And the laundry?

A. And the laundry.

Q. With reference to the item of labor, what did you do to compute the cost of labor in your cost analysis?

The Court: Or more particularly what did you do, if anything, to inform yourself regarding that item as an item of cost? That is the proper inquiry, so as to acquaint the opposing litigant and the Court with the kind of information regarding the carefulness or non-carefulness of his investigation.

(Testimony of Charles B. O'Brien.)

Q. (By Mr. Broz): What did you do to inform yourself of the cost of labor?

A. I obtained the manning table and had that in my possession——

Q. The manning table from where?

A. From the personnel office of the Alaska Communication System, which told how many people were aboard the vessel, would be aboard the vessel, and what types of positions they would fill, such as the master, first engineer, second engineer, deck hands, firemen and cable splicers. After receiving that I had in my possession—— [168]

The Court: Did you ascertain or did you not ascertain their labor scale?

A. I was coming to that, your Honor. At that time I obtained the wage schedule of these various types of labor aboard the cable ship Lenoir.

Q. (By Mr. Broz): From where?

A. From the Civil Service Commission on the wage board employees of maritime within the Northwest, which listed the hourly rate of these people who go to make up the ship's crew of the Lenoir. From that I computed the hourly rate on a yearly basis. Also, using historical cost factors since the year 1951 to the operation of the ship in regards to labor.

Q. And what did you do with that information once you received it?

A. Once I had received it I computed that information on a daily cost of labor on that ship.

(Testimony of Charles B. O'Brien.)

Q. With reference to the item of fuel, what did you do to inform yourself as to the cost of fuel?

A. I went personally down to the cable ship Basil O Lenior and talked with Captain Bowen, who directed me to the ship's records, and obtained from those records the fuel consumed of that ship over the past year.

Q. Was that taken from an official record of the Alaska Communication System? [169]

A. That was taken from the official record of the cable ship Lenoir, and also at that time I personally viewed the ship's log with Captain Bowen and computed the amount of fuel and obtained the unit cost of that fuel from the vouchers paid by the Alaska Communication System from the oil companies.

Q. With reference to the item described by you as expendable items, what do those items include?

A. Those items would include such items as lube oil, grease, rags, and so forth, that lose their identity in the operation of the ship. This was obtained by historical cost data of previous operation of the ship. Also in going over the ship's record, permanent record as to what they had used the past year. This was computed since 1951 on a yearly basis and then averaged out to a daily cost.

Q. Did you obtain that information, the cost information, the historical data, from the records of the Alaska Communication System?

A. I obtained them from the records of the

(Testimony of Charles B. O'Brien.)

Alaska Communication System in reference to the cost of operation of the cable ship Lenoir.

Q. Well, with reference to the item of dry-docking and repairs, what did you do to inform yourself as to the cost of dry-docking and repairs?

A. On the dry-docking and repair was my personal knowledge of the estimated cost—not the estimated cost but the routine dry-docking and repair of the ship over the years since 1951. That is also——

Q. Did these records refer specifically to the Lenoir?

A. These records refer specifically to the Lenoir which are taken into cost account records of the Alaska Communication System, and I made an analysis of that and averaged it out on a daily basis.

Q. With respect to the item of laundry, what did you do to inform yourself as to the cost of that item in your cost analysis?

A. I used the historical cost figures of the Alaska Communication System from the year 1951 through 1955 and developed an average daily cost of laundry in operating that cable ship Lenoir.

Q. Did the historical data that you obtained come from the official records of the Alaska Communication System?      A. Yes, sir.

Q. Did they refer specifically to the cable ship Lenoir?

A. These referred specifically and were so identified as records of the cable ship Lenoir.



(Testimony of Charles B. O'Brien.)

Q. With reference to the item of subsistence, what did you do to inform yourself as to the item of subsistence in the cost analysis which you prepared? [171]

A. We obtained the historical——

The Court: Of what persons?

Q. (By Mr. Broz): To what did the item of subsistence in your cost analysis relate?

A. It related to the food supplied the crew aboard the cable ship *Lenoir*. That figure was obtained from the historical cost records of the Alaska Communication System since 1951 and were averaged out on a daily basis of the ship's operation.

Q. During which period of time did you conduct this particular cost analysis?

A. This particular cost analysis was conducted specifically with the idea of developing a daily cost. It was originated in October of 1954 and was completed in November of 1954.

Q. Did you prepare any subsequent cost analysis with reference to this particular vessel?

A. Yes, sir.

Q. And when was that?

A. That was in May of 1955.

Q. Did you follow the same procedure as you have previously described with reference to the first cost analysis?      A. Yes, sir.

Q. Did you arrive at a daily operational cost figure based on your cost accounting for the quarter ending in April of 1955 [172]



(Testimony of Charles B. O'Brien.)

A. Yes, I did, I arrived at a daily cost figure and at the end of April of 1955.

Q. What was that figure?

A. And that figure was \$1,500.

Q. And what did that figure represent?

A. That represented a daily cost of operation of the cable ship Basil O Lenoir.

Q. Based on the items which you have previously testified to? A. Yes, sir.

Q. Did that cost figure include any item of profit or loss? A. No, sir, it did not.

Q. The report which you completed covering the quarter ending in April of 1955, to what period did that particular cost analysis relate?

A. That period covered from the time of the original study in October of 1954, it preceded and was reviewed each month's operation of the cable ship Lenoir.

Q. Was that procedure followed thereafter?

A. Yes, sir, and it's still in effect.

Q. Are these cost analyses reviewed monthly?

A. Yes, sir, they are, they are reviewed every month.

The Court: What do you do with the records of them, if anything? [173]

A. The records of them are submitted to the comptroller of the Alaska Communication System on a monthly basis, sir.

The Court: Do you keep any copies of them in the local files of the officer having them made, your

(Testimony of Charles B. O'Brien.)

files or the files that are maintained locally in connection with your studies of this kind?

A. Yes, sir, they are.

The Court: Was this particular exhibit or any copy of it so kept?

A. Yes, sir, it was.

The Court: You may proceed.

Mr. Broz: You may inquire.

The Court: You may cross examine.

Mr. Morrow: I wish to first of all move that the witness' testimony in respect to the computation in question which appears to be a written analysis be stricken on the ground it's not the best evidence.

The Court: The Court has received it as a summarized statement of the information obtained and testified to regarding the studies and conclusions as to information given from the witness stand by this witness, an expert witness in the field of cost accounting, in this case.

Mr. Morrow: I have reference—— [174]

The Court: In this case orally stated.

Mr. Morrow: I have reference to the computation of an average daily cost. There is no exhibit on file in connection with any of those costs, and I——

The Court: I understood that Libelant's Exhibit 3 was a summarized statement which was based upon various informational bases, and that these various sources of information, like labor and fuel and laundry and the expenses of operating that

(Testimony of Charles B. O'Brien.)

ship, were items that went into this study which as I understand it is Libelant's Exhibit No. 3.

Mr. Morrow: Well, I'll ask the witness.

### Cross Examination

Q. (By Mr. Morrow): Sergeant O'Brien——

The Court: What I am informed is Libelant's Exhibit 3 I hold in my hand, and Counsel may have access to it.

Mr. Morrow: Yes, I had that in mind, your Honor.

(Libelant's Exhibit No. 3 was handed to Mr. Morrow.)

Q. (By Mr. Morrow): Is it Sergeant Grime?

A. O'Brien, sir. [175]

Q. O'Brien. I'm sorry. Sergeant O'Brien, in reference to your testimony in respect to the average daily costs which you computed to be \$1,500 over a period from 1951 to 1955, is that reflected in Libelant's Exhibit 3?

A. In Exhibit 3, sir, is the direct cost of the submarine cable break between Seattle and Fort Lawton.

Q. Your answer then is no, is it not?

A. The answer is a direct cost. It is not the \$1,500.

Mr. Morrow: Would you please read the question back.

Q. (By Mr. Morrow): And will you please, Sergeant O'Brien, listen to the question and answer the question.

(Testimony of Charles B. O'Brien.)

(The reporter read the question beginning  
Line 1, this page.)

A. No, sir.

Q. Thank you.

The Court: Is any part of it reflected in that exhibit?

A. The direct part of the repair of the cable is reflected there, sir.

Mr. Morrow: Now, may it please the Court, the witness has not answered the Court's question. I wonder if we could have it read back.

The Court: You may.

Mr. Morrow: It can be answered yes or no, [176] and the witness should answer it.

The Court: Read the question of the Court, Mr. Reporter.

(The reporter read the Court's question as follows:

"Is any part of it reflected in that exhibit?")

A. Yes.

Q. (By Mr. Morrow): Well, now, will you point out—as I understood your testimony, Libelant's Exhibit 3 reflects the direct cost during the period and referring to only the cable repair between March 23rd and March 29th. Isn't that correct?

A. Yes, sir.

Q. Now you have answered once that this does not, Libelant's Exhibit 3 does not reflect the information in respect to your analysis between 1951 and 1954, isn't that so?

A. May I have the question read again, please?

(Testimony of Charles B. O'Brien.)

Q. Well, I'll restate it.

A. All right, sir.

Q. The Court has asked you if Libelant's Exhibit 3 reflects any information upon which you based your analysis to determine an average daily cost between the years 1951 and 1954. Now what is your answer?

A. If it reflects any of that part in there, in the exhibit? [177]

The Court: Let him see the exhibit.

(Libelant's Exhibit No. 3 was handed to the witness.)

A. May I have your question read, please?

The Court: It will now be read again.

(The reporter read the question as follows:

"Q. The Court has asked you if Libelant's Exhibit 3 reflects any information upon which you based your analysis to determine an average daily cost between the years 1951 and 1954. Now what is your answer?")

A. The answer to that question would be, in using any cost developed over the period——

Q. (By Mr. Morrow): Now, can't you answer that yes or no?

The Court: Just a moment. The Court strikes the Court's ruling admitting Libelant's Exhibit 3 heretofore and advises Counsel on both sides that I have not seen a single fact or a single figure reflected therefrom and I know nothing about what is in it up to this time, and the Court has not and will not give it any consideration. If the witness



(Testimony of Charles B. O'Brien.)

has stated orally any information, the Court will consider that in connection with this case, and you may disregard what the Court said in connection with the ruling or the overruling of [178] any objections stated subsequent to the former admission of it in evidence.

(Libelant's Exhibit No. 3 was rejected.)

The Court: You may proceed.

Mr. Morrow: May I inquire, your Honor, what the status of Libelant's Exhibit 3 is?

The Court: The status is that it is not admitted. The objection to Libelant's Exhibit 3 is sustained. The witness has been orally interrogated and has orally answered regarding the things that he has done, but as far as this exhibit and anything it shows the Court has not and will not consider it, unless it is later admitted.

Q. (By Mr. Morrow): Sergeant O'Brien, you concluded that the cost of repair, the direct cost of repair for the repairs of the Fort Lawton-Seattle submarine cable in 1955, the month of March, was \$6,954.23, is that correct? A. That's correct.

Q. Now, what part of that figure, if any, referred to depreciation of the barge?

A. Referred to depreciation of the barge, was \$504.

Q. Now, depreciation is not a direct cost item, is it?

A. That is considered as part of a fixed charge.

Q. That's right. [179]

A. That's a fixed charge of an operational cost.



(Testimony of Charles B. O'Brien.)

Q. But depreciation is not a direct cost item, is it?

The Court: Do you mean out of pocket expense?

Q. (By Mr. Morrow): Out of pocket expense.

A. It is not out of pocket expense.

Q. In other words, the depreciation in respect to the cable ship Lenoir continues whether or not she is making repairs or not, isn't that so?

A. It continues whether it is or it isn't.

Q. Right. A. But if it is working——

Q. Now, did you also have in that total figure an item in mind of \$188.20 or 15 per cent charged for overhead? A. Yes.

Q. That again is not a direct or out of pocket item, is it? A. Yes, it is.

Q. Well, how do you figure that?

A. Because that takes into consideration, the 15 per cent overhead here takes into consideration the accounting personnel and the personnel office processing the records of these people.

Q. Well,——

A. So it is out of pocket money.

Q. Well, was it paid out at that time?

A. Sir? [180]

Q. Was it paid out?

A. Yes, sir, it was paid out.

Q. Have you got any records to show it was paid out?

A. I do not have the records now.

Q. It's simply a bookkeeping entry, is it not, 15 per cent?

(Testimony of Charles B. O'Brien.)

A. That is what it amounted to for those phases.

Q. That's what—that's fine, thank you. Now, you have an item in this \$6,954.23, Equipment 09. What does that refer to?

A. That refers to the amount of cable that was replaced.

Q. And where are the records which support that item?

A. The records to support that item are in my work papers.

Q. Have you got those with you? A. Yes.

Q. Well, may I see them? A. Yes, sir.

(Papers were handed to Mr. Morrow.)

Q. All right. Now, Sergeant, will you please state what the total out of pocket expense and costs were excluding the item of depreciation and the item of overhead?

A. The direct out of pocket cost to the Alaska Communication System was the amount of \$6,540.23, which would mean the deduction of the depreciation.

Q. I frankly don't know whether you have answered the question or not and I would like to have the question reread. [181]

A. I have answered the question of out of pocket money to the Alaska Communication System.

Q. Now just a moment. The question just calls for a dollar figure. Now I'm going to ask that the question be reread and that you listen to it and that you give us the exact answer to the question.

Mr. Morrow: May I have it reread, your Honor?

(Testimony of Charles B. O'Brien.)

The Court: That will be done. It will be reread.

(The reporter read the question as follows:

“Q. Now, Sergeant, will you please state what the total out of pocket expense and costs were excluding the item of depreciation and the item of overhead?”)

(Papers were handed to the witness.)

A. Excluding those two items, depreciation and the 15 per cent overhead, the figure is \$6,262.03.

The Court: 62 what?

A. \$6,262.03.

The Court: Excluding what items?

A. Excluding depreciation of \$504 and a 15 per cent overhead of \$188.20. [182]

The Court: One hundred and what?

A. \$188.20.

The Court: So with those items excluded you have a reduction on the \$6,954 of \$6,262.03?

A. Yes, sir.

The Court: You may proceed.

Q. (By Mr. Morrow): Now, these out of pocket expenses going to make up the sum of \$6,262.03 include all items of our of pocket expenses, do they?

A. No, sir.

Q. Other—just a minute. Other than depreciation and overhead?

A. They include the direct charges.

Q. Well, I'm going to repeat the question. Does this figure of \$6,262.03 include all out of pocket expenses of the ship Lenoir for the Fort Lawton-Seattle submarine cable repair between March 23

(Testimony of Charles B. O'Brien.)

and March 29, 1955 other than the item of depreciation and the item of 15 per cent overhead?

A. They include the cost of the cable ship Lenoir.

Q. Can you answer the question yes or no?

A. Yes.

Q. Your answer is yes?

A. For the cable ship Lenoir.

Mr. Morrow: That's all. I have no further [183] questions.

### Redirect Examination

Q. (By Mr. Broz): Sergeant O'Brien, do they include all of the out of pocket expenses for the cable repair?

A. No, sir, they do not.

Q. What expenses do they not include?

A. They do not include the direct overhead expense for the headquarters of the Alaska Communication System.

The Court: How much is that item, do you know?

A. That item would run roughly around 20 per cent.

The Court: Overhead?

A. Yes, sir.

The Court: How much in dollars?

A. That would run approximately roughly around fifteen to seventeen hundred dollars for the total headquarters of the Alaska Communication System.

(Testimony of Charles B. O'Brien.)

The Court: Is that the amount which equals the percentage you just mentioned?

A. No, sir, it does not. This percentage——

The Court: I will tell you, Mr. O'Brien, if you could just answer questions—it is all right for you to take a little time if it is necessary to realize [184] what a question means, but we are not interested in having you give answers that are not called for, and you have done that an awful lot of times while you have been on the stand today. I am trying to find out what is the fact, how much in dollars does the overhead item not included in \$6,262.03 amount to. Otherwise saying, what is the amount in dollars of the overheads which you have not included in the \$6,262.03 under the cross examination of respondent's Counsel?

A. It would be an estimate at this time. It would be an estimate of \$1,200.

The Court: You may inquire.

Mr. Broz: Thank you, your Honor.

Q. (By Mr. Broz): Sergeant, you don't have any records with you to substantiate those figures?

A. No, sir, I do not.

Q. Does the figure of \$6,262.03 include any costs relating to the preparation of the cable ship for putting to sea and repairing the cable?

A. It does not.

The Court: What did you call that item, repairs?

Mr. Broz: For preparing the ship for sea and to make the repair.



(Testimony of Charles B. O'Brien.)

The Court: Somehow or another I do not [185] appreciate what is meant by the inquiry and what items or operations are included in the question.

Q. (By Mr. Broz): Sergeant, what operational costs, out of pocket expenses, of the Alaska Communication System were not included in the figure of \$6,262.03 which relate to the cable repair job on the Seattle-Fort Lawton cable?

A. It does not include the preparation of the ship to go on this repair job, this cable break repair job.

Q. You do not have the figures that would represent that cost with you, do you?

A. No, sir, I do not.

The Court: As I recall, this witness at some time since he has been on the stand made some reference tentatively or otherwise when libelant's Counsel was interrogating him about a \$1,500 item. \$1,500 per day, it seems to me, if I recall correctly. If that is still in the case I would like to have that explained, unless it has been withdrawn.

Mr. Broz: It has not, your Honor.

Q. (By Mr. Broz): Sergeant, with reference to the \$1,500 item which you have previously testified to, will you state what that figure of \$1,500 represents?

A. It represents what the ship would be chartered for to a government or commercial concern on a daily basis, the [186] price the concern would have to pay.

The Court: The charter hire value, is that it?



(Testimony of Charles B. O'Brien.)

A. Yes, sir, the charter hire.

Mr. Morrow: If it please the Court, this witness has not qualified himself to say what some private person would pay for the charter of the vessel. His previous testimony and his capacity only deals with an accounting analysis of an average daily cost. The Court previously had indicated that this witness wasn't and hadn't qualified to testify in respect to what a reasonable charter hire might be for this vessel, and I move that the witness'—

The Court: The Court will grant that motion and does strike it. The Court did not realize that was what it was about.

Q. (By Mr. Broz): Sergeant, you testified earlier concerning a \$1,500 cost item. What did the \$1,500 cost item which you testified to relate to?

A. It related to the amount that the ship would be chartered to a commercial or other government agency on a daily cost basis.

Q. Did that figure represent—

Mr. Morrow: The same objection, your Honor.

The Court: If it relates to what in the commercial charter market this vessel could be had for [187] or rented for or rented out for, the objection is sustained.

Q. (By Mr. Broz): You made a reference, Sergeant, to a daily cost figure? A. Yes, sir.

Q. Does that relate to the \$1,500 item in any way?

A. I don't understand your question.

(Testimony of Charles B. O'Brien.)

Q. On the basis of your cost accounting experience with reference to this particular ship——

The Court: Experience, do you mean work?

Mr. Broz: If it please the Court, I do.

Q. (By Mr. Broz): With reference to your cost analysis of the Lenoir which you earlier testified to that you conducted in 1954 and subsequently reviewed through until the present time, did you arrive at an operational cost figure for the Lenoir?

A. Yes.

Q. Was that a daily operational cost figure?

A. Yes, it was.

Q. And did that represent the cost of operating the ship to the Alaska Communication System?

A. It represented a cost of operation to the Alaska Communication System.

Q. And what was that daily cost figure?

A. \$1,500. [188]

Mr. Broz: No further questions.

#### Recross Examination

Q. (By Mr. Morrow): Sergeant O'Brien,——

The Court: That daily cost figure is for what sort of activity on the part of the vessel?

A. That is the laying or repairing of submarine cable, which is the work the ship does.

The Court: Would that not include for instance that item you mentioned a few minutes ago of readying, or repairing I think you said but you probably meant to include the sense of readying,

(Testimony of Charles B. O'Brien.)

the vessel for a specific repair job in case it should be and when called upon to make the repair?

A. The \$1,500 does include that preparation for going to the repair job, your Honor.

The Court: Is not a cable ship supposed to hold itself in readiness daily to proceed upon a repair job if one comes along? Is that not a part of its business, or did your studies include that subject?

A. My studies included the overall operation of the cable ship as to a standby, which at that time her crew was reduced to the crew that would be going out on a repair. The cable ship does not have at all [189] times the sailing complement when it is tied up at the dock.

The Court: You may inquire. Do not let the inquiry lag. Is there anything else?

Mr. Morrow: Yes, your Honor. I would like to have the log book of the cable ship Lenoir marked. It is agreed that it may be admitted in evidence. That is for the period of March, 1955.

The Clerk: It will be marked Respondent's Exhibit A-3.

(Log book of Basil O Lenoir was marked Respondent's Exhibit No. A-3 for identification.)

Q. (By Mr. Morrow): Sergeant O'Brien, I hand you Respondent's Exhibit A-3, which——

Mr. Morrow: I offer this in evidence. It is agreed under the pretrial order.

The Court: Could you give it a name, please?

Mr. Morrow: The log book of the Lenoir.

The Court: Any objection to the offer?

(Testimony of Charles B. O'Brien.)

Mr. Broz: No objection, your Honor.

The Court: Admitted.

(Respondent's Exhibit No. A-3 for identification was admitted in evidence.)

Q. (By Mr. Morrow): Now, does Respondent's Exhibit A-3 [190] show the time when the Lenoir started to make preparations for the Fort Lawton-Seattle repair? I direct your attention to March 23, 1955.

A. At 10:30 o'clock on Wednesday, 23 March 1955, "Splice 102-B-'A' Type to 102-B-'LA' Type."

Q. Well, your answer is yes, it does?

A. That's correct, sir.

Q. And that started on March 23, 1955, didn't it?

A. Yes, sir.

Q. Now, when you prepared your ledger sheet or looked into information to determine the costs of the repair, you looked at the log, did you not?

A. No, sir.

Q. Well, now I direct your attention to some testimony which you gave a few minutes ago to the effect that the cost items did not include the period for preparation to go out and make the repairs. Do you recall that testimony?

A. Yes, sir.

Q. Well, now, it shows, does it not, in the log book that the ship started to make preparations for repairs on March 23, 1955?

A. On the cable, sir, not preparation to go. On the cable only, not preparation to go.

Q. All right. Now, if you will look in the log

(Testimony of Charles B. O'Brien.)

book you [191] will find that the preparations to go were made a little later, weren't they?

A. Previous.

Q. Well, where do you find that in the log book? I don't think you'll find it.

A. I don't find it here.

Q. You don't find it. As a matter of fact, Sergeant O'Brien, the Lenoir at the time on March 21, 1955 was making preparations and outfitting to do a cable job up in Alaska, wasn't it?

A. I couldn't tell from this log. It doesn't indicate it here, sir.

Q. Well, don't you recall that to be a fact when you made your investigation as to costs of this job?

A. Bearing on my recollection at that time, she was getting ready to go to Alaska.

Q. Yes. Now your recollection is refreshed, can you now state that your costs in respect to the repair of the Fort Lawton cable in March, 1955 are dealt within your testimony of the costs for the period from March 23 to March 29, 1955?

A. That was the period that the ship was at the job, at the site.

Q. That's right. Well, now, you don't purport to give any evidence in respect to the damages sustained by the [192] libelant for any period prior to March 23, 1955, do you? A. Yes, sir.

Q. Well, now, what is your testimony in that respect?

A. We did not charge any of the cable ship's



(Testimony of Charles B. O'Brien.)

time in preparation to go to this specific cable break between Fort Lawton and Seattle.

Q. Well, do you have any figures——

A. May I finish, sir?

Q. Do you have any figures which support that?

A. I do not have those figures with me, no, sir.

Q. Well,——

The Court: Wait just a moment.

Mr. Morrow: Yes.

The Court: Now what did you want to say to finish your statement? You wanted to finish your statement.

A. In the cost of a repair of a submarine cable throughout the accounting profession from the time that that specific cable is reported out of service is the time that the charges are rightfully charged to that job.

Q. (By Mr. Morrow): Well, I understand that——

A. They had notified the submarine cable ship.

Q. Yes. I understand that may be an accounting procedure, but as a matter of fact the only charges which you charged this job are those which you have testified to, aren't they? [193]

A. Yes, sir.

Mr. Morrow: That's all.

Mr. Broz: No further inquiry.

The Court: Step down.

(Witness excused.)

The Court: Call the next witness.



Mr. Mikkeltorg: The libelant will call Mr. Getzendaner.

MARK A. GETZENDANER

called as a witness in behalf of libelant, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mikkeltorg): Will you please state your name, sir, and spell it for the clerk?

A. Mark A. Getzendaner, G-e-t-z-e-n-d-a-n-e-r.

The Court: Getzendaner?

A. Getzendaner.

The Court: And it is Mark A.?

A. Mark A.

The Court: Pardon? Just repeat yes or no.

A. Yes.

The Court: It is Mark A? [194]

A. Yes, sir.

Q. (By Mr. Mikkeltorg): Will you state your address, please, sir?

A. 17430 Ballinger Way.

Q. What is your present position Mr. Getzendaner?

A. I'm the General Counsel for the Alaska Communication System.

Q. And how long have you occupied that position?

A. Since the 2nd of February, 1954.

Q. Are you a member of any bar, Mr. Getzendaner?

A. Yes, I am.

Q. Of what bars or court?

(Testimony of Mark A. Getzendaner.)

A. The State of Ohio and of this court.

Q. Are you a member of the federal bar of this court?

Mr. Morrow: We admit Mr. Getzendaner's qualifications as an attorney.

Q. (By Mr. Mikkelborg): In general, Mr. Getzendaner, what are your duties as Counsel for the Alaska Communication System?

A. I supervise the operation of the law division of the headquarters and advise the commanding officer and his staff on legal problems.

Q. With regard to your duties concerning legal problems, do they include matters of preparation of contracts or negotiation of contracts for the acquisition of telephone [195] or telegraph facilities for Alaska Communication Service?

A. Yes, they do.

Q. Do they also include negotiation and preparation of contracts with regard to facilities operated by the Alaska Communication Service and made available to other agencies or persons?

A. Yes.

Q. Have you had any occasion to prepare a contract or agreement with regard to the cable ship *Lenoir*? A. I have.

Q. Have you prepared similar contracts or agreements with respect to any other cable ships?

A. Yes, I have.

Q. With respect to the agreement concerning the *Lenoir*, what arrangements were made and with what party or what concern?

(Testimony of Mark A. Getzendaner.)

Mr. Morrow: I object to the question unless it is limited in time and unless it is connected up materially to this case.

Mr. Mikkelsen: If the Court please, we will relate the matter of time in relation to this case in about two more questions.

Mr. Morrow: I don't know why that couldn't be done first.

The Court: Yes, I have the same feeling. Can you not find out if anything was done regarding this [196] matter by him? "What did you do concerning this matter," and so forth. Identify it. "What kind of subject matter did your work encompass," or something of that sort, and then after you find out whether or not it is anything that concerns this contract you could bring the contract forward and have it marked at least for identification. It may never be admitted, but you could have it marked. Proceed.

Q. (By Mr. Mikkelsen): Directing your attention, Mr. Getzendaner, to the period of April, 1956, was there any arrangement concerning the Lenoir prepared by you or consummated by you at that time?

A. In the general period of time, within several months of that time, yes.

Q. And what was that?

A. We chartered the Lenoir to the American Telephone & Telegraph Company.

Mr. Morrow: I object to further questions along this line. Certainly the chartering of the Lenoir

(Testimony of Mark A. Getzendaner.)

to the A. T. & T. in April, 1956 in no way can establish any reasonable charter hire of the Lenoir. The specific instance of one year later certainly is immaterial and irrelevant.

The Court: The objection is sustained until we find out what the charter hire rate was at about [197] the time this accident occurred. It can be done by proper witnesses orally the same as by some writing. Please proceed. I think the Court is sufficiently reminded by those connected with this case as to what is important and what is not. I think we are about to get into the position of dilly-dallying around about bringing forward proof. Proceed. Let us expedite this trial. I know that is not intended, but we are about to be getting into that sort of position in the case. The trial is not progressing like it should and a trial normally does. Proceed.

Q. (By Mr. Mikkelborg): In connection with your duties, Mr. Getzendaner, as Counsel for the Alaska Communication System, did you cause any figures to be prepared with respect to the cost to the government of the Lenoir during the year 1955?       A. Yes, I did.

Q. And will you state what periods of 1955 you caused such figures to be prepared?

A. I caused a figure to be prepared based upon the operating year, January, 1955 through December of 1955.

Q. Was that in connection with an agreement

(Testimony of Mark A. Getzendaner.)

for the use of the Lenoir on a cost basis to some other operating organization than ACS?

A. Yes, sir, it was. [198]

Q. What organization was that?

A. The American Telephone & Telegraph Company.

Q. What figure was derived with respect to the cost of the Lenoir in connection with such an agreement? A. \$1,500 per day.

Q. What does that figure represent?

A. That figure represents the actual cost to the government of operating the Lenoir per day.

Q. Was that the same figure that was in effect in March of 1955? A. Yes, it was.

Q. Does that figure include any profit?

A. It includes no profit.

Q. Does it include any loss to ACS?

A. To my knowledge it includes no loss.

Q. What were your instructions, or what was your objective in connection with arriving at a figure for the use of this vessel at that time?

A. My instructions were to determine the actual cost of operation of the vessel to the government without a figure for profit and reflecting no loss.

Q. What steps did you take, Mr. Getzendaner, in early 1955 or at any time in 1955 with respect to obtaining that figure?

A. I called upon our comptroller who is in charge of the [199] fiscal division of our operations to provide me with such a per diem figure.



(Testimony of Mark A. Getzendaner.)

Q. Did anyone from the comptroller's office work with you in that connection?

A. I had some contact with the comptroller himself and I think an occasional contact with Sergeant O'Brien. However, he developed the figures I think based upon his records and in connection with other records in the comptroller division.

Q. Was some sort of contractual arrangement executed with anyone on the basis of that figure?

A. Yes, there was.

Q. What was that contractual arrangement? Would you describe it, please?

Mr. Morrow: I object to any contractual arrangement in 1956 as being irrelevant and immaterial on the question of damages.

Mr. Mikkelsen: In that connection, if the Court please, the witness has stated that the essence of it, of course, being the price or the cost was derived at the particular time material in this case, namely, in 1955, including the month of March, 1955.

The Court: The objection is overruled.

The Witness: May I have the question read back? [200]

The Court: Read it, Mr. Reporter.

(The reporter read the last question as follows:

"Q. What was that contractual arrangement? Would you describe it, please?")

A. The United States Government entered into



(Testimony of Mark A. Getzendaner.)

a charter party with American Telephone & Telegraph Company for the services——

Mr. Morrow: I——

The Court: No, do not read any document that is not in evidence.

Mr. Morrow: If there is a document, it seems to me that there would be an objection to it as not being the best evidence, and I object on that ground besides irrelevancy and immateriality.

The Court: That objection is sustained. If you have something, mark it and we will see.

Q. (By Mr. Mikkelborg): Would you lay aside that document, Mr. Getzendaner, and just state in general terms the arrangement?

Mr. Morrow: Well, I object to that. That doesn't satisfy the objection if there is a document.

The Court: The objection is sustained.

Mr. Mikkelborg: Very well. [201]

Q. (By Mr. Mikkelborg): Did you bring with you the charter party which you have referred to?

A. Yes, I did.

Q. Do you have it with you now?

A. Yes.

Mr. Mikkelborg: May we have it marked?

The Court: It will now be marked libelant's exhibit next in order.

The Clerk: Libelant's Exhibit 4.

(Copy of charter party agreement was marked Libelant's Exhibit No. 4 for identification.)

The Court: I wish you, if you have any more

(Testimony of Mark A. Getzendaner.)

exhibits, to bring them all out now and exhibit them to opposing Counsel and tell him what you intend to do with them now, and I wish you to mark them all and introduce them all at one time. We have spent enough time on exhibits in this trial. This is the second day of this trial and we do not have the libelant's side of the case finished yet. Let that be marked.

The Clerk: Libelant's Exhibit 5.

(Copy of War Department permit was marked Libelant's Exhibit 5 for identification.)

The Court: Do you wish at any time during the trial to have this received in evidence?

Mr. Broz: It is an agreed exhibit, your Honor.

The Court: The last one, Exhibit 5.

Mr. Mikkeltorg: Is the Court referring to an exhibit marked "Permit"?

The Court: Yes, it is.

Mr. Mikkeltorg: That I believe is an agreed exhibit.

The Court: Is there any objection to its going into evidence?

Mr. Morrow: No.

The Court: It is now admitted.

(Libelant's Exhibit No. 5 for identification was admitted in evidence.)

The Court: Now Libelant's Exhibit 4, what kind of a thing is that?

Mr. Mikkeltorg: A charter party agreement.

The Court: It is the subject about which you

(Testimony of Mark A. Getzendaner.)

are inquiring of this witness now on the stand, is that correct?

Mr. Mikkeltborg: That's correct.

The Court: You may proceed to inquire of the witness.

Mr. Mikkeltborg: I ask that the witness be furnished Libellant's Exhibit 4.

(Mr. Morrow examining Libellant's Exhibit No. 4 for identification.) [203]

The Court: Proceed.

Mr. Morrow: This is my first opportunity to look at this, your Honor.

The Court: It is marked here. Was it not submitted to you before?

Mr. Morrow: No, your Honor.

The Court: I have a good notion to exclude further use and reference to it. The purpose of the pretrial procedure was to disclose to opposing Counsel all intended exhibits, and if that was not done I am considering forbidding any further use of the document.

Mr. Mikkeltborg: If the Court please, this document and the testimony in connection with it was the subject matter of the materials uncovered the evening before the trial began and was also the subject of the motion we made asking the Court to permit us to amend.

The Court: Why did you not then and there submit this to opposing Counsel and let him see it and tell him what you intended to do with it?

(Testimony of Mark A. Getzendaner.)

Why do you wait now to take up your time needlessly and the Court's?

Mr. Mikkelborg: The existence of this duplicate document in the hands of this witness was only discovered this morning.

The Court: Why did you not show it to him when you discovered it the first thing this [204] morning so he could have seen it during the noon hour?

Mr. Mikkelborg: We were occupied with another portion of the trial, your Honor, and had other problems.

The Court: The objections are sustained. Proceed with the case.

Mr. Mikkelborg: May I——

The Court: The Court declines to permit any further use of this document.

Q. (By Mr. Mikkelborg): Mr. Getzendaner, do you have personal knowledge in connection with the charter party agreement between ACS and the American Telephone & Telegraph Company?

A. I do.

Mr. Morrow: May it please the Court——

Q. (By Mr. Mikkelborg): Did you prepare that——

The Court: Wait just a moment.

Mr. Morrow: I wish to make a motion, if I may. I would like to move the exclusion of any further testimony in connection with charter hire or reasonable charter hire or average costs of the vessel Lenoir on the ground that it is not alleged

(Testimony of Mark A. Getzendaner.)

or stated in the original pleadings or in the pre-trial order that any such claim is made on that basis. The claim in Paragraph II on Page 3 of the libelant's contentions make [205] the following claim for damage only: "That in consequence of said damage and break"—that is Page 3, Line 4—"the necessary repairs have been accomplished at the reasonable sum of approximately \$9,000." There are no special damages claimed in connection with the loss or any expense other than expense items pertaining to the repairs.

The Court: I have seen before this occasion in this file the pretrial order and I find it has not been put in the file yet and I ask the clerk as soon as we finish referring to this on this occasion to affix this in the file so it will not be lost, and every other paper in this case, including the briefs, put them in the file, attach them in the file.

What page do you refer to?

Mr. Morrow: Page 3.

The Court: I have it.

Mr. Morrow: Line 4.

The Court: I have that, too. "In consequence of said damage and break in the Alaska Communication System submarine cable the necessary repairs have been accomplished at the reasonable sum of approximately \$9,000, in which sum libelant herein has been damaged." What is it now that you say?

Mr. Morrow: The objection is to testimony on [206] an item of damages for reasonable charter



(Testimony of Mark A. Getzendaner.)

hire of the vessel Lenoir on the basis that the claim in the pretrial order is for necessary repairs in the the sum of \$9,000.

The Court: Any response?

Mr. Mikkelborg: If the Court please, the libelant in this case I submit should not be penalized on something that is a matter of form. I ask the Court to direct its attention to Page 4 of the agreed pretrial order, the issue of fact——

The Court: What line, please?

Mr. Mikkelborg: On Lines 1 and 2.

The Court: Item No. 4?

Mr. Mikkelborg: Item No. 4, "The damages, if any, that the libelant sustained as the result of negligence or fault, if any, of the respondent," and the issues of law in there, namely, what damages, if any, the libelant sustained as the proximate result of the negligence or fault of the respondent.

In this case we're attempting to show, and the language in the pretrial order——

The Court: Does the \$9,000 include this item that is now objected to?

Mr. Mikkelborg: It certainly does, your Honor.

The Court: It does include that?

Mr. Mikkelborg: It does include that. [207]

The Court: What have you to say as to that?

Mr. Morrow: Well, my——

The Court: It is not an item in addition to \$9,000, is it?

Mr. Mikkelborg: Certainly not, your Honor.

Mr. Morrow: Well, my objection is that the



(Testimony of Mark A. Getzendaner.)

complaint or what are now the contentions limits the scope of provability of damages. The claim is for damages for repairs. Now we are getting 'way outside that and claiming charter hire here or reasonable charter hire.

The Court: What has this to do with repairs, or what do you seek to show this item you are trying to prove for this hire has to do with cost of repairs?

Mr. Mikkelsen: We seek to show, if the Court please, that the item before the Court, the charter party, is a figure based on the out of pocket cost to the government of the operation of the *Lenoir* on a per diem basis, a figure that was arrived at before and including the time of this submarine cable damage; that that figure represents the per diem cost and that figure represents the cost of the use and employment of the *Lenoir* during the time she was required to repair the Seattle-Fort Lawton submarine cable and as such constitutes the cost of the repair and the damages to the [208] libellant in the case.

Mr. Morrow: I believe what Counsel said is that they are now claiming an item of detention for the ship *Lenoir*. That is not an item which is claimed in the complaint, in the original libel, or in the contentions. They are only claiming for repairs.

The Court: The objection is overruled.

Mr. Mikkelsen: May we proceed, if the Court please?

(Testimony of Mark A. Getzendaner.)

The Court: You may now proceed within the limits now confronting the situation.

Mr. Mikkeltorg: May we have the privilege of introducing or working with the charter document itself?

The Court: No, you have not. You have not the privilege of referring to it or using it any further in the case. Proceed.

Q. (By Mr. Mikkeltorg): Do you have personal knowledge of the arrangement between Alaska Communication System and American Telephone & Telegraph Company based on the figures derived in 1955 including the month of March, 1955?

A. I do.

Q. Did you—

Mr. Morrow: I object, your Honor. I believe Counsel is circumventing the Court's ruling. [209]

The Court: This does not circumvent it and the objection is overruled. He can state what is in his personal knowledge with respect to the fact of the existence of an arrangement and, if he knows what the cost of the arrangement was in connection with the repairs, he may state so upon a proper question being addressed to him along that line, but he cannot introduce the contents of any written agreement, and if he has one before him I wish him to surrender it.

Q. (By Mr. Mikkeltorg): Do you have anything before you, Mr. Getzendaner?

A. No, I don't.

Q. Did you prepare the agreement we have re-

(Testimony of Mark A. Getzendaner.)

ferred to personally yourself?      A. Yes.

Q. What was the per diem figure——

The Court: You can ask him what any rental or letting of the use of the vessel to anybody was, but you cannot ask him anything about a contract. You can ask him the result of the operations or the conduct of the parties, what he knows of that.

Q. (By Mr. Mikkeltborg): What was the result of your negotiations or transactions in that respect?

A. The cable ship was leased to the American Telephone & Telegraph Company. [210]

Q. And what arrangements were made with respect to the consideration or cost?

The Court: Not the arrangements, but what it cost.

Mr. Mikkeltborg: Very well.

Q. (By Mr. Mikkeltborg): What did it cost American Telephone & Telegraph?

The Court: If he knows.

Q. (By Mr. Mikkeltborg): If you know, Mr. Getzendaner.

A. \$1,500 per day.

Q. And would you state whether that figure includes any profit to ACS or any loss to ACS?

A. To the best of my knowledge it includes no profit nor loss.

Q. Would you state whether or not that was the objective in determining the charter hire figure?

A. That was the objective, yes, sir.

Q. When was that figure arrived at?

(Testimony of Mark A. Getzendaner.)

A. It was arrived at in January and February of 1956.

Q. What was that figure based on?

A. It was based on the experience and records of the ACS for the year 1955.

Q. Was that based on monthly cost figures or quarterly cost figures, or what periods were used?

A. I do not know what the basis of it was. [211]

Q. Do you know who prepared the cost analysis?

A. No, I don't. I know that Sergeant O'Brien had something to do with it, but actually prepared it I do not know.

The Court: Since this was received over objection I wish to be informed by Counsel offering this testimony as to whether or not there is any dispute in this case as to the right of the United States to sue for this. I understand that this last item was something that was a cost to the American Telephone & Telegraph Company and not the United States of America. The United States of America is the libelant in this case, not the American Telephone & Telegraph Company.

Mr. Mikkelborg: Yes, your Honor, the figure——

The Court: This exhibit is received over objection, and that objection has not been dealt with. What right have you to introduce evidence of repair expense sustained by a person who is not suing here for relief of the Court?

Mr. Mikkelborg: We are not, if the Court please, introducing any item of repair expense with respect to A. T. & T. The testimony here has sought

(Testimony of Mark A. Getzendaner.)

to elicit, and I believe has elicited, the cost of the operation of the Lenoir to the libelant during the time of this cable break and during the time of the repair of the cable break, that this cost figure was derived [212] during this time and it was a no profit and loss figure, and that the same figure was used in a subsequent charter arrangement as depicting the cost of operation of the Lenoir on a per diem basis to the libelant.

We have no further questions of this witness.

The Court: Is there any objection on this ground involved in the Court's question of Counsel just now stated? I ask that question of Counsel for the respondent.

Mr. Morrow: Yes, there is, your Honor. I can't see any relevancy in chartering the vessel to American Telephone & Telegraph in 1956 and the amount of charter hire in any way tied up or connected with repairs to this cable in March of 1955.

The Court: Do you offer this evidence of what was paid to the United States, the libelant here, for the use of its cable ship Lenoir by the American Telephone & Telegraph at one time as evidence of what it would have necessarily cost the United States to employ that cable ship in this repair job? Is that the reason for it, or what is the reason for it?

Mr. Mikkelsen: No, your Honor. This testimony is corroborative of the testimony of Sergeant O'Brien wherein he testified he derived the cost of the operation of the Lenoir on a per diem basis



(Testimony of Mark A. Getzendaner.)

covering the [213] period of time here in question.

This witness has testified that the cost figures were used in an agreement whereby the Lenoir was made available to another agency on a cost basis, the very self-same figure. It simply shows the cost to the government of maintaining and operating the Lenoir during the time in question. That figure was derived, and having been derived was subsequently made available to A. T. & T. and the vessel was——

The Court: Did the government ever repair this cable?

Mr. Mikkelborg: Yes indeed, your Honor.

The Court: Why could it not show what the cost of the repairs was?

Mr. Mikkelborg: We attempted to show that, if the Court please, by the routine ledger sheet entries prepared by the libelant's cost accountant.

The Court: What was done as to another job may be wholly different. The other job may have been one that was done in some other waters other than Pacific waters or other than Puget Sound waters or other than State of Washington waters or other than Alaskan waters. It may have been under conditions so dissimilar to this that there is no comparison. I cannot tell, and I do not know in the operation but that the vessel in [214] connection with the job may have necessarily encountered collateral conditions not common to the conditions here, Mr. Mikkelborg.

Mr. Mikkelborg: If the Court please, the costs



(Testimony of Mark A. Getzendaner.)

of operating the vessel would be the same within the immediate area of the Northwest, and if the Court is concerned as to that matter, the next witness will testify as to where the Lenoir was employed during this particular charter, if that is of importance.

The Court: This objection is sustained and the Court's admitting this evidence is set aside and the evidence is stricken and the Court will disregard it and declines to hear any further evidence on this collateral transaction. You may proceed.

Mr. Mikkelborg: If the Court please, in that event we will reoffer Libelant's 3, which was the cost accountant's ledger sheet of the repair costs accrued against the cable repair job in his cost records.

The Court: Any objection?

Mr. Morrow: I——

The Court: It is Mr. O'Brien's cost sheet. Let Mr. Morrow see it.

(The exhibit was handed to Mr. Morrow.)

Mr. Morrow: The same objection I made before, your Honor, that this ledger is not supported by [215] any original documents.

The Court: The Court sustains the objection and declines to receive that document in evidence, not only for that reason but for other reasons previously discussed.

(Libelant's Exhibit No. 3 was rejected.)

The Court: Any other questions you wish to ask of this witness?

(Testimony of Mark A. Getzendaner.)

Mr. Mikkeltorg: No further questions of this witness.

The Court: You may cross examine.

Mr. Morrow: No questions.

The Court: Step down, please.

(Witness excused.)

The Court: Call the next libelant's witness.

Mr. Mikkeltorg: The libelant will call Mr. Christensen.

The Court: Come forward and be sworn. [216]

STANLEY H. CHRISTENSEN,  
called as a witness in behalf of libelant, being first  
duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mikkeltorg): Will you please state your name, sir?

A. Stanley H. Christensen.

Q. And your address?

A. 3411 California Avenue.

Q. Your position?

A. Cable foreman aboard the cable ship Lenoir.

Q. How long have you held that position?

A. Since August, 1946 to the present date.

The Court: How do you spell Christensen?

A. C-h-r-i-s-t-e-n-s-e-n.

The Court: You may proceed.

Mr. Morrow: I'm sorry, I didn't get it. Is it——

The Court: It is C-h-r-i-s-t-e-n-s-e-n.

(Testimony of Stanley H. Christensen.)

Mr. Morrow: Thank you.

Q. (By Mr. Mikkelborg): Did you hold that position in March of 1955? A. I did.

Q. What are the duties of your position?

A. Supervise the splicing and testing of the submarine cable. [217]

The Court: You will have to speak up more distinctly than that, and I think probably it would be helpful if you would lean back against the back of the chair and just let it support your back because with most witnesses, it has been the experience in the past, it does not help any to lean forward and therefore affording a shortening of the distance between you and the person wanting to hear. What is your official capacity or relationship with this matter?

A. Cable foreman on board the cable ship Lenoir.

The Court: You may proceed.

Q. (By Mr. Mikkelborg): What was your assignment in—do you recall any specific assignment in March of 1955?

A. In regard to the job?

Q. With regard to any work you did at that time.

A. I don't understand your question.

Q. Do you recall any specific jobs that you worked on or participated in in March of 1955?

A. Yes, the repair of the Seattle-Fort Lawton submarine cable.

Q. Did you personally participate in that re-

(Testimony of Stanley H. Christensen.)

pair job of the Seattle-Fort Lawton submarine cable?      A. Yes.

Q. Would you describe what you did in connection with that [218] work?

A. I supervised the splicing and testing of the submarine cable that was broken.

Q. Were you aboard the Basil O. Lenoir?

A. I was.

Q. Where was your station? Where did you perform your work on the ship?

A. Well, my work was performed at different places, but while we were starting the repair I was on the bow of the ship. We took the end off the sea wall inside of Pier 57 and commenced picking it up towards the break. I was at the bow of the ship watching the cable as it came over the bow.

Q. Did you observe the cable being picked up from the sea wall?      A. I did.

Q. Did you observe it during the entire run or picking up process from the sea wall until the end was found?      A. Yes.

Q. Would you describe what you observed with respect to that cable?

A. Well, first of all, where the cable came out of the sea wall it was pulled real tight from the hole down to the water, it had a scope, and from the sea wall back to the manhole where the terminal is the cable was [219] stopped there with a chain and that was pulled bar tight so that we couldn't remove it, and so consequently the cable was cut

(Testimony of Stanley H. Christensen.)

out by the sea wall and the end was pulled aboard and then we commenced picking up out towards the break, and as I watched that cable coming aboard——

Q. Just a minute, Mr. Christensen. With respect to your testimony of the tightness of the cable at the sea wall, was that the usual condition of the cable? Was that the way it was laid?

A. No, sir. It hung straight up from the bottom up to the hole where it goes into the sea wall. In other words, it hung straight up and down. That's the normal condition.

Q. All right. Would you describe your observation, what you observed with respect to the cable as it came aboard?

A. Well, we picked the cable up from the sea wall out towards the break. My observation, and I'm trying to remember, is that we picked up approximately 1,500 feet. The cable was in fairly good condition, but from then on out I observed that something had been dragging along the cable and had scuffed the outer jute, and then as we came out more towards the end approximately, well, 500 feet from the end, it was very badly scuffed. That is, all the jute had been torn off the cable and it [220] appeared that some steel object had been rubbing very hard, drug along the cable, because it scarred the steel, the steel armor, and smashed——

Q. How much length was involved in this scarring?



(Testimony of Stanley H. Christensen.)

A. Oh, I would say approximately — well, the jute was torn off 500 feet, and from about 200 feet it was scarred off toward the end.

Q. How much length was involved with the scoring or chafing on the jute without actually tearing the jute away? How much length of the cable was so marked?

A. Well, to my recollection I would say a thousand feet.

Q. Did you observe the condition of the end of the cable?       A. Yes.

Q. Was it a broken end?

A. It was a broken end. It was exposed. The copper conductors were exposed to the sea water and there was a solid ground, the copper conductors to the sheath.

Q. Would you describe the appearance of the end with respect to whether it was barnacle encrusted or old or new or fresh or what?

A. It was very shiny, just like some steel object or some heavy object had rubbed against it.

The Court: What was the condition of it at the place of the maximum damage effects? What happened to the cable there at that place where the climax [221] result occurred?

A. Well, it pulled apart, it was broken in two.

The Court: What was broken in two?

A. The submarine cable.

The Court: You may inquire. Proceed.

Mr. Mikkelsen: Counsel may cross examine.



(Testimony of Stanley H. Christensen.)

### Cross Examination

Q. (By Mr. Morrow): I assume you have been employed aboard the cable ship Basil O. Lenoir for a good number of years, Mr. Christensen?

A. Yes.

Q. Do you hold any licenses from the United States? A. No, I do not.

Q. What previous experience in repairing or laying cables have you had?

A. Previous to 1955?

Q. Yes.

A. Well, I've been employed by the Alaska Communication System aboard the cable ship Lenoir since August of 1946 as a civilian.

Q. I see. Now, you testified that you started picking up the cable at the sea wall. You pick that up on a drum, [222] do you not? A. Yes.

Q. And the drum has a counter on it so you can tell how many fathoms of cable you have picked up? A. Yes, sir.

Q. In this instance you picked up something like 3,450 feet of cable before you came to the end of the break, didn't you?

A. I presume that's what they picked up, from the records, from the log records.

Q. Yes. Now, you say that the cable was scarred 200 feet from the end?

A. Well, from a hundred to 200 feet, yes, like some metallic object had rubbed against it.

(Testimony of Stanley H. Christensen.)

Q. I see. Is that cable still in existence so it could be examined?

A. The cable still in——

Q. Yes. A. The old cable?

Q. Yes.

A. No, I don't believe it is.

Q. Did you establish the point where the foreign object came first into contact with the cable?

A. Well, some foreign object had drug along it from the fifteen—— [223]

Q. Yes, but did you establish that point in number of feet?

A. By observation I did, yes.

Q. Well,——

A. By the distance out from the dock and all.

Q. Captain Bowen in previous testimony on discovery deposition has indicated that the scuffing started to occur about 500 feet from the end of the cable. Would that be your estimate?

A. Well, I think he probably was referring to a different scuffing. The scuffing that I say started at 1,500 feet was something that was riding along the cable that was just making a mark against the jute. It wasn't tearing the jute or anything.

Q. I see. Well, now, you also mentioned another figure of a thousand feet. What had you reference to there?

A. From 1,500 feet to 1,000 feet out, that is 1,500 feet out from the sea wall and then from that point 1,000 feet out, something had been dragging along the cable.

(Testimony of Stanley H. Christensen.)

Q. Oh, I see.

The Court: You do not speak very explicitly and I am going to ask you, do you mean that beginning at a point about 1,500 feet out on this cable as it was laid out there in its normal condition and extending inward towards the dock, the pier, the landfall, the shore landfall of this cable for about another 500 feet [224] to a point about 1,000 feet from the dock this scuffing or scarring or scraping condition continued, is that what you meant to have said by the words you have already used?

A. Can I repeat my description?

The Court: Yes, but can you not answer my question yes or no, or do you understand my question?

A. I didn't understand your question.

The Court: What I want to know is, what was the longest distance out as indicated by the resulting changes in the exterior appearance of this cable to the nearest point inward to the pier or dock did this scraping condition of this cable appear to you upon your examination of this cable?

A. Well, my observation was that 1,500 feet out from the sea wall I noticed this scraping along the cable. It did not—but this scraping did not tear the jute, it just rolled along the cable.

The Court: We will get the description of the kind of damage later, but we are talking about distance now. Proceed.

A. 1,500 feet out.

(Testimony of Stanley H. Christensen.)

The Court: Beginning there, is that right? Is that the point farthest out from the dock?

A. Yes. [225]

The Court: How far down towards the dock did you follow that scraping effect?

A. This was not down alongside the dock, this was out in the water.

The Court: No, sir, towards the dock farthest away out to seaward from the dock. You have that fixed at 1,500 feet, about.

A. Yes.

The Court: You certainly went towards the dock in finding out if there was any damage at any place other than that first spot you struck, did you not?

A. We were not going out—we were going out seaward.

The Court: You were going out from the dock. How far was it from the dock then that you found the first damage?

A. From the sea wall out to where I saw the first indication of something riding on the cable was 1,500 feet.

The Court: Then did you keep on going out to sea?

A. Yes.

The Court: Did you see any more damage done?

A. Yes, out towards the end.

The Court: How far from the first place was [226] it damaged, or did you notice any damage?

A. Approximately 500 feet from the end, the outer jute covering on the cable was torn off entirely.

(Testimony of Stanley H. Christensen.)

The Court: I still do not know what he is talking about.

Mr. Mikkelborg: Is that from the broken end, Mr. Christensen?

A. Yes, that's from the broken end in.

Q. (By Mr. Morrow): Well, now, Mr. Christensen,——

The Court: Would that be 22,000 feet or would it be more than 1,500 feet away from the dock or would it be less than 1,500 feet away from the dock measured on the ground or measured on that part of the cable which extended from the dock to the place where you first measured the 1,500 feet?

A. The rotos were started at the sea wall and were picking up out into the water, and as we picked up 1,500 was when I first noticed this scuffing on the outer part of the cable, and that run for approximately a thousand feet until we came to a place where the jute was pulled off entirely, and the steel, which is the armor wires of the cable, was scuffed.

The Court: So the length of the damage to the cable, is this true or not, from the place where you first observed the damage to the farthest out on [227] the cable away from the dock that you noticed damage was about a thousand feet, is that right? The length of the cable damage was about a thousand feet, is that right?

A. No, sir, I'd say 1,500 feet. The thousand



(Testimony of Stanley H. Christensen.)

feet was where the jute torn off and 500 feet where the jute was torn off entirely.

The Court: That does not mean a thing to me. I have less information than I had before the witness took the stand. Proceed with the examination.

Q. (By Mr. Morrow): Let's see if I can straighten this out, Mr. Christensen. Starting from the broken end of the cable——

The Court: Where was that? Name the place where it was.

Mr. Morrow: The cable, your Honor, runs out from the sea wall.

The Court: I understand that, but at what point or how many feet from the point where it touches the grounding of the cable or the fixation of the cable at the dock, how far is it out there?

Mr. Morrow: Yes, I would like to develop that a little later, your Honor. I want to develop something here in a little different manner.

The Court: You may have five minutes. [228]

Mr. Morrow: Yes.

Q. (By Mr. Morrow): The cable was broken out at the Seattle end, and as I understand you started at the sea wall, you proceeded to roll up the cable until you came to the broken end. Is that correct?      A. Yes, sir.

Q. Now, your testimony,——



(Testimony of Stanley H. Christensen.)

Mr. Morrow: And I think this will clear it up, your Honor.

Q. —is that 200 feet from the broken end the cable was badly scarred, the steel sheathing was scarred? A. Yes, sir.

Q. Shiny? A. Yes.

Q. And then for another thousand feet in there was damage to the cable, is that correct?

A. Well, I said——

Q. That makes 1,200 feet, doesn't it?

A. Yes, but I said 500 feet in there, too.

Q. All right. Do you want to add another 500 feet from the broken end? A. Yes.

Q. All right. Then you've got 1,700 feet, is that right? A. Yes.

Q. That the cable from the broken end was damaged or showed [229] evidence of damage in one way or another for 1,700 feet from the broken end? A. Well,——

Q. Is that your testimony? A. Yes, sir.

Q. All right.

Mr. Morrow: I have no further questions.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Mikkelborg: The libelant will call Captain John H. Bowen.

The Court: Come forward and be sworn as a witness.

JOHN H. BOWEN,

called as a witness in behalf of libelant, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Mikkelborg): Would you state your name, sir?

A. John H. Bowen.

Q. Your address?

A. 1029 Summit Avenue North, Seattle.

Q. What is your occupation or position? [230]

A. I'm the captain of the Army's cable repair ship Colonel Basil O. Lenoir.

Q. How long have you held that position, Captain?

A. I've been captain since 1951, February.

Q. By whom are you employed?

A. At present by the United States Army Transportation Terminal Agency, Seattle.

Q. Do you have any relationship to the Alaska Communication Service?

A. Yes. We work—operate the ship in support of their submarine cable requirements.

Q. Do you hold any licenses, Captain?

A. Yes, I have a master of oceans with a limit of 1,000 tons.

Q. Any other licenses?

A. It also is for mate of oceans unlimited.

Q. I didn't hear the last part of your answer.

A. Unlimited.

Q. What sort of vessel is the vessel under your command?

(Testimony of John H. Bowen.)

A. It's a cable repair ship, 164 foot in length, 37 foot in breadth, diesel propulsion, triple screw, built for the express purpose of laying and repairing submarine cables.

Q. How long have you been engaged in laying and repair of submarine cables? [231]

A. I joined that ship in 1944 and have been engaged constantly with one exception, I was away from the ship for about a year.

Q. Was your employment during this time out of the port of Seattle or around the port of Seattle?

A. Yes, sir.

Q. How long have you been employed around the Seattle waterfront?

A. On this ship since '44 and prior to that time sailing since 1942.

Q. Would you describe—you have given some description of the Lenoir. Would you describe her complement and equipage?

A. Yes, sir. She has nine officers, a cable foreman, fifteen civilian crew members, and we supplement the crew with military personnel up to an additional seven or eight people.

Q. Do you recall your work in the Lenoir during March of 1955?      A. Yes.

Q. What was the nature of that work?

A. We were engaged in a submarine cable repair on the submarine cable extending from Seattle to Fort Lawton.

Q. Are you familiar with the area in which that repair was performed? [232]

(Testimony of John H. Bowen.)

A. Yes.

Q. Had you been there at any time or done work in that area prior to March of 1955?

A. Yes. We laid the cable initially in 1949 and had a subsequent repair in February of 1953.

Q. I see. Were you in the ship in 1949 when it laid the cable? A. Yes.

Q. What was the date you commenced repair of the—I believe you said Seattle-Fort Lawton cable in March of 1955. What date was that work commenced?

A. We commenced to work on that cable repair on March the 23rd, 1955.

Q. Did that involve picking up or recovery of the cable? A. Yes, sir.

Q. Had you ever picked up or recovered that cable before that time? A. Yes.

Q. When?

A. It was broken I believe in February of 1953 and we had a similar repair to perform at that time.

Q. During your repair in 1953, did that involve the relaying of the cable? A. Yes.

Q. Do you know the position in which the cable was relaid [233] after its repair in 1953?

A. Yes. Not so specifically that I could state its coordinates in latitude and longitude, but I know the general area in which it was put back.

Mr. Mikkelsen: I ask that the witness be furnished what has been marked and admitted as I

(Testimony of John H. Bowen.)

believe Respondent's A-1, the Coast and Geodetic Survey Chart 6449.

The Court: It has been admitted and it is the first one of those charts, No. 6449.

(The exhibit was handed to the witness.)

Q. (By Mr. Mikkelborg): Now, handing you what has been admitted in this case as Respondent's A-1, do you recognize that?

A. Yes, I recognize it as the Coast and Geodetic Chart 6449 of Elliott Bay and adjacent areas.

Q. Does it contain any information regarding the cable area which you have mentioned?

A. Yes, sir.

Q. What does it show with respect to cable, if anything?

A. It indicates a cable area west of Pier 57.

Q. Examine that cable area, Captain, and state whether or not, or if you are able to state, whether or not the cable that you relaid in 1953 was laid in or around the cable area marked on the chart.

A. It came back within the boundaries of the cable area marked on the chart.

Q. Very well. When did you next perform repair work on that cable in that area?

A. In March of '55.

Q. When did you first learn of the necessity or the break of that cable in March of 1955?

A. I don't recall exactly. We were told to go and repair the cable on March 23rd. However, I am aware that I knew of it before that time. Inasmuch as the cable went out on the 21st, it would

(Testimony of John H. Bowen.)

have had to have been either the 21st or the 22nd.

Mr. Morrow: I object to that part of the answer which is a voluntary statement.

The Court: The objection is sustained.

Mr. Morrow: Inasmuch as the witness has——

The Court: The reasoning of the witness will be stricken and the Court will disregard it.

Q. (By Mr. Mikkelborg): Can you state when the repair job or the assignment first came to your attention?

A. I have it recorded in the log of that period, in the ship's log of that period. If I could refer to that I could tell you exactly.

The Court: Let him see that exhibit. What exhibit number is it? Will you describe what it is [235] again, Captain?

A. It's the ship's log, sir, for the period 1955.

The Clerk: Exhibit A-3, your Honor.

Mr. Mikkelborg: I believe the witness is referring to what has been marked——

The Clerk: Respondent's Exhibit A-3.

The Witness: Respondent's Exhibit A-3, sir.

The Court: It has been admitted as Respondent's Exhibit A-3. It is a log book.

(The exhibit was handed to the witness.)

Q. (By Mr. Mikkelborg): When did the Lenoir under your command proceed and commence activities in connection with the repair of the Seattle Fort Lawton cable?

A. I have a log entry here under 1050, "Finished testing final end into number one tank." That



(Testimony of John H. Bowen.)

refers to another cable. Immediately following that is the entry, "Received official word from the main office that the Seattle-Fort Lawton cable has fault in it and ship will cease operations of coaxial cable work and make preparation to make repair on telephone cable."

At 1100, the time on the 23rd of March, "Crew securing gear and singling up to shift to regular berth."

Q. The log states "Received official word"?

A. Yes, sir. [236]

Q. Under what time is that entry made?

A. It's immediately following an entry of 1050. There is no time recorded——

Q. On what date? A. On March 23, 1955.

Q. Did you receive any unofficial word prior to that time that you can recall?

A. I did, yes.

Q. Do you recall when you received any unofficial word?

A. Again I can't recall exactly. It was probably the day before.

Q. Captain, were you in charge of the repair job of the Seattle-Fort Lawton cable?

A. Yes.

Q. Would you describe to the Court the conduct of that repair job?

A. Yes, sir. On the 23rd of March we received word shortly before noon and on the 24th——

The Court: At this time we will take a ten minute recess.

(Short recess.) [237]

Wednesday, August 20, 1958.

After midafternoon recess.

(All parties present as before.)

JOHN H. BOWEN,

resumed the stand.

The Court: You may proceed. All are present.

Mr. Mikkelsen: May we have the last line or two of testimony read?

The Court: That will be done.

(The reporter read back as follows:

“Q. Would you describe to the Court the conduct of that repair job?

“A. Yes, sir. On the 23rd of March we received word shortly before noon and on the 24th——”.)

A. To continue——

The Court: Yes, resume that same sentence.

A. On the 24th we loaded nine-tenths of a mile of the same type of cable from a storage area at Todds Plant B and proceeded to Pier 57 to begin repair on the Fort Lawton-Seattle submarine cable.

Q. (By Mr. Mikkelsen): Captain, before proceeding further with your repair, would you describe the kind of cable with which you were concerned in that repair job, the kind of cable we're talking about here today?

A. Yes, sir. The cable is known technically as 26 pair, [238] 19 gauge. That refers to the——

The Court: 26 pair, 19 gauge?

A. Gauge.

(Testimony of John H. Bowen.)

The Court: Which means what?

A. That refers to the conducting wires in the center.

The Court: Do you mean the size of them, or what?

A. Yes. There are 19—I beg your pardon, 26 pair. That would be 52 independent copper conductors in the center.

The Court: 19 gauge, what does that mean?

A. That's the size, the diameter of the——

The Court: Each wire?

A. Each wire, sir.

The Court: It was 26 pair, 19 gauge cable?

A. Electrical conductors.

The Court: Electrical conductor cable, is that what it was, or something else?

A. Yes, sir.

The Court: That is a proper way of describing it, is it, electrical conductor cable, or is that——

A. That's the central portion of the cable, sir. I could go on with my explanation——

The Court: You may proceed. [239]

A. Those copper conductors are insulated from one another by paper insulation.

The Court: I have heard about copper conductors. Did it have some of them?

A. Those are copper conductors, sir.

The Court: These wires?

A. Those wires are copper.

The Court: You may inquire.

A. They are insulated from one another by

(Testimony of John H. Bowen.)

paper insulation. There is a lead sheath over the outside of this group of copper conductors. It would appear as a soft lead pipe. There is jute padding over the outside of the lead sheath. There are 21 steel armor wires spiraled over the outside of that jute. There is an additional coating of tarred jute over the outside of the steel armor wires. That is a complete description of the cable.

The Court: You may proceed.

Q. (By Mr. Mikkelborg): Now would you proceed to describe the repair job that you conducted on that date? I believe you said the——

A. On the 24th we picked up the repair cable from Todds Plant B. That was nine-tenths of a mile we loaded aboard the ship,—expecting some of the cable to be damaged we would need some repair cable to work with,—and moved over to Pier 57. I believe on the following morning [240] we cut the cable where it enters the sea wall between Pier 57 and Pier 56. At that point the cable was stretched out tight from the hole in the sea wall toward the bay. Its normal position would be hanging straight down from the hole in the sea wall to the bottom of the bay. This indicated that it had been pulled out of position and drawn tight at the sea wall.

We cut the cable at its entrance to the sea wall and took the end aboard the ship over a drum and picked it up. As it comes off the drum on the in-board side we coil it in the ship, so——

(Testimony of John H. Bowen.)

Q. Which end of the ship does this cable come aboard the ship on the drum?

A. On the forward end of the ship. And we picked the cable up toward the fault, coiling it up in the ship as we went, and we picked up to a broken end.

Q. How far out did the ship go before the broken end was taken aboard?

A. I believe that was approximately three thousand four hundred and some odd feet.

Q. Is there a record of the repair job?

A. Yes, there is.

Q. What record is that?

A. In the ship's log.

Q. Do you have that log before you? [241]

A. Yes.

Q. What exhibit marking is on that log?

A. Respondent A-3.

Q. Does Respondent's A-3 have a record of the position in which the inshore broken end of the cable that you have just described, the position in which that was picked up? A. Yes, sir.

Q. What is that position?

A. Latitude 47 degrees 36 minutes 29 seconds north, longitude 122 degrees 21 minutes 8 seconds west. It indicates a depth of thirty fathoms.

Q. The depth of thirty fathoms, is that the depth of the water in the position in which the broken end was reported as having been brought up? A. Yes, sir.

Q. What did you do next, Captain?

(Testimony of John H. Bowen.)

A. Having the broken end in, we set about to raise the other broken end, that one coming from Fort Lawton towards Seattle.

Q. How did you set about that?

A. We rigged a grappling device and lowered that onto the bottom and dragged for the cable back some distance from the end of the cable so that the cable would not slip through the grapnel after it had hooked the cable.

Q. Did you move your ship from the position in which you [242] picked up the inshore broken end before you began this grappling?

A. Yes, sir.

Q. In what direction?

A. We moved slightly to the north and to the west.

Q. And did you find the other segment of the cable?      A. Yes, we did.

Q. How was that done?

A. We hooked it the first drag with the grapnel as we pulled the grapnel along with the ship and raised it to the surface, brought it up to the bow of the vessel.

Q. What did you bring up to the bow of the vessel?

A. The cable, the submarine cable coming from Fort Lawton.

Q. Was it the end of the cable?

A. It was back some distance from the end.

Q. And then what did you do?

A. We cut the cable at that point where it



(Testimony of John H. Bowen.)

was hooked over the grapnel and tested it toward Fort Lawton to see that all the electrical conductors were good.

Q. What was the result of the test?

A. It indicated that all of the conductors were not good, and we picked up additional cable toward Fort Lawton to try and cut out those faults.

Q. What was done next?

A. At the time we picked up sufficient cable to clear the [243] cable of faults our office in the meantime had informed us over the radio that they wanted a minimum of eighteen good pair. We were pressed for time and could not correct all the cable faults, and they had to have a minimum of eighteen good pair.

Q. Why were you pressed for time, Captain, if you know?

A. We had another cable job pending which was quite important and expensive scheduled and we had to get on with that.

Q. Will you proceed with your description of the repair?

A. We picked the cable up to a point, cutting it at frequent intervals and testing it, until we found we had enough conductors to make 22 good pair. At that time we spliced the repair cable that we had loaded from Todds Plant B into the ship onto the Fort Lawton end and paid it back toward Pier 57.

Q. Did you observe the cable as it was picked

(Testimony of John H. Bowen.)

up by the Lenoir, both the inshore end and the off-shore segment?      A. Yes, sir.

Q. Would you describe the condition of the inshore end as you observed it?

A. My recollection of that from my vantage point was that the outer jute was torn off the cable for a distance of 500 feet from that end; that the steel armors were scored badly for a distance of 100 feet from the end. [244]

Q. How many cable repair jobs do you estimate that you have performed, Captain, in your experience?

A. It would be difficult for me to say offhand, Mr. Mikkelborg. I think our records at present indicate we have completed 185 cable operations. Some of those deal with the laying of new cable, but the majority would deal with the repairing of submarine cables. Those cables interrupted by ships' anchors or fish trap anchors I think would be something in the neighborhood of fifteen or twenty repairs of that nature.

Q. What position did you find the broken cable in relative to the cable area which you have noted on Respondent's Exhibit A-1, the Coast and Geodetic Survey chart?

A. At the time we picked up the cable we found it north of that area.

Q. How far north?

A. I don't recall exactly, Mr. Mikkelborg.

Q. From the positions in which you located the cable and its condition as you observed it did you

(Testimony of John H. Bowen.)

draw any conclusions based on your cable repair experience, any conclusions with reference to what had happened to this cable or how it had been disturbed or if it had been disturbed from its original position?      A. Yes.

Q. What were those conclusions? [245]

A. I concluded that a ship's anchor had probably hooked the cable and had dragged it along a distance and then broken the cable.

Q. Did you conclude that it had been broken in the position in which you laid it?

Mr. Morrow: I object to that as leading.

The Court: Sustained. Change the form of the question, Counsel.

Q. (By Mr. Mikkeltorg): Do you have an opinion, Captain Bowen, with respect to the position in which you found the cable and the location in which you last laid that cable, do you have any opinion in that connection?      A. Yes.

Q. What is that opinion?

Mr. Morrow: Wait a minute. I object to that as not being a subject of expert testimony. The Alaska Communication System has the exact location of the cable when it was relaid in 1953, they have the exact location where this cable was found following the break in 1955, and I don't believe that the witness should express an opinion upon those relative matters until the basic facts are established upon which to draw a conclusion or an opinion.

Mr. Mikkeltorg: If the Court please, the cap-

(Testimony of John H. Bowen.)

tain is qualified as a man of extensive experience [246] in cable repair and has devoted his career for years to the repair of cables.

The Court: You might ask him how many different cable repair jobs he has formanned or directed.

Mr. Mikkelborg: I did ask that, your Honor, and he——

The Court: How many different ones?

Q. (By Mr. Mikkelborg): I'll ask again, Captain, how many different cable jobs have you performed, cable repair jobs have you performed or participated in during your command of the cable repair ship Lenoir? Your best estimate.

A. My best estimate for the period in which I've been captain of the cable ship Lenoir would be about forty repairs.

Q. Did you participate in other cable repair jobs before you were responsible as captain?

A. Yes, sir.

Q. And is that any substantial number in addition to that forty?

A. Yes, sir. I was first officer of the ship and participated in all the cable operations in which she was involved with the exception of the one year I was off the ship from the time it was built in '44.

Q. I believe you testified you were in the [247] Lenoir since 1946, is that not right?

A. I joined the ship in '44. If I said '46 it was

(Testimony of John H. Bowen.)

a mistake. I joined the ship in '44 and then I was absent from the ship in '46.

Q. Can you estimate how many repair jobs you have participated in since you first joined the cable repair ship Lenoir?

A. I think close to 100 cable repairs.

The Court: What is the question objected to? Mr. Reporter, will you read it.

(The reporter read the question as follows:

“Q. Do you have an opinion, Captain Bowen, with respect to the position in which you found the cable and the location in which you last laid that cable, do you have any opinion in that connection?

“A. Yes.

“Q. What is that opinion?”)

Mr. Morrow: I object to the form of the question.

The Court: The form of the question is too indefinite. What is the subject of your inquiry as to which you ask him to express an opinion? [248] Make your question clear on that point.

Q. (By Mr. Mikkelsen): Captain Bowen, do you have any opinion as to how much if any the cable was disturbed based on the location in which you found it and your knowledge of the place in which it was laid? Last laid, I should say, by you.

A. I could not state how much it had been moved, no.

Q. Had it been moved at all?



(Testimony of John H. Bowen.)

A. I'm quite sure it had been moved some in a northerly direction.

The Court: I wish Counsel now interrogating to form the habit of conducting the examination himself. If he does not do that, the tendency in the future in his work will be that he does not know whether to use his own line of interrogation or that of somebody else. I ask him to conduct his examination himself. If at the end of a heading of a subject you feel you would like to consult with co-counsel, do that very quietly and very briefly, and then resume the examination and go on. I ask that you not seek or permit interruptions.

Mr. Mikkelborg: We will commence a new phase, if the Court please.

Q. (By Mr. Mikkelborg): Captain, have you been in charge of the Lenoir continuously since first assuming command? A. Yes, sir. [249]

Q. Do you know whether the Lenoir has been operated in Alaska Communication System cable work during that entire time?

A. Yes, I do know.

Q. And was it so operated with Alaska Communication Service work during the time which you have commanded the Lenoir?

A. Not all the time, no, sir.

Q. What other work has it had during your command?

A. We have worked on charters for American Tel. & Tel. and the Coast Guard and Bureau of Federal Prisons.



(Testimony of John H. Bowen.)

Q. Directing your attention to a charter to American Tel. & Tel., what period of time was involved in that charter?

A. In 1956 we were chartered for a period of one month and again in '57 approximately one month.

Q. Are you familiar with the arrangements in that charter?

A. I had a copy of the charter furnished to me as the government's representative aboard the vessel.

Q. What was the charge to American Tel. & Tel. for the use of the Lenoir?

Mr. Morrow: Objected to as a continuous effort to get in the terms of this charter party, a charter party which was a year later and which has no bearing and can have no bearing upon the question of damages.

The Court: Is it respecting this same cable [250] break or is it some collateral transaction?

Mr. Morrow: It's something collateral entirely, your Honor. It's a charter with the——

The Court: Does it concern a different break from the one about which this cause of action arose?

Mr. Mikkelborg: The question doesn't concern a break at all, it concerns the employment of the Lenoir under his command.

The Court: It is in connection with some job that is not related to this breaking that occurred in this case?

(Testimony of John H. Bowen.)

Mr. Mikkelborg: It is not directly related to the breaking in this case.

The Court: The objection is sustained.

Q. (By Mr. Mikkelborg): Captain, referring to the exhibit which has been marked Respondent's A-3, would you state whether or not that record shows the time logged for the Lenoir on the Fort Lawton-Seattle cable repair job?

A. Yes, it does.

Q. How much elapsed time is shown devoted by the cable ship Lenoir to the repair of the Seattle-Fort Lawton submarine cable?

A. We started on 1100 hours on the 23rd of March, 1955, and we completed the ship's portion of this work at 1000 hours on Tuesday, 29 March 1955. [251]

Q. Was the engagement of repair by the Lenoir completed at that time?

A. Yes, sir.

Q. The 29th of March?

A. Yes, sir.

Q. Was the cable repair job completed?

A. I do not know if the end back in the manhole on the street inside of Pier 57 was terminated at that time.

Q. Had the cable been relaid and fully connected up by that time?

A. The cable had been relaid, the end passed in through the sea wall and it was secured in the manhole. Whether or not it could be back in operation I would not know because I don't know when the end was terminated in that manhole.

(Testimony of John H. Bowen.)

Q. Your repair work was complete at that time, is that correct?      A. Yes.

The Court: About how many more witnesses do you have, Counsel?

Mr. Mikkelborg: We have one.

The Court: One more?

Mr. Mikkelborg: If the Court please——

The Court: Can you finish with that one this afternoon in another half hour and this one? [252]

Mr. Mikkelborg: We are substantially completed with this witness at the moment. It depends——

The Court: I ask that you complete the libelant's case in chief within the next thirty minutes.

Mr. Mikkelborg: We will attempt to do so, if the Court please. At this time, if the Court please, the libelant by way of offer of proof advises the Court that the testimony of Captain Bowen, master of the Alaska Communication System cable repair ship, would show and prove that the Alaska Communication System——

The Court: Do you ask and offer to prove such and such facts? If so, will you state what it is you offer to prove?

Mr. Mikkelborg: I will do so.

The Court: Do that, if that is what you offer to do.

Mr. Mikkelborg: We offer to prove, if the Court please, that the testimony of Captain Bowen of the cable ship Lenoir would show that the Lenoir was actually chartered in March of 1956 for the sum of \$1,500 per day, which sum represented the actual

(Testimony of John H. Bowen.)

daily operational cost of the Lenoir to the Alaska Communication Systems as evidenced by the cost accounting figures computed by Sergeant O'Brien, who has been a prior witness in this matter, and which were prepared [253] during March of 1955, the same time in which the Lenoir was engaged in this particular job and at a time material and relevant to this action. We make this offer for the Court's consideration.

The Court: What is the attitude of respondent's Counsel?

Mr. Morrow: We object to it on the same basis we objected before, your Honor. The matter is irrelevant and immaterial as to the actual damage in this case.

The Court: The objection is sustained. In that connection the Court affords to Counsel the opportunity, if he has not already used it, to prove similar information with respect to what was done in the repairing of this particular break in this cable in March of 1955. Proceed.

Mr. Mikkelsen: You may cross examine, Counsel.

Mr. Morrow: I would like to have some exhibits marked.

The Court: Which ones? You are entitled to all of them if you wish them. Which ones do you wish?

Mr. Morrow: I would like first of all to put in evidence the cable report. It's called the deck cable report of the vessel Lenoir.

(Testimony of John H. Bowen.)

The Court: Assemble all the exhibits, Mr. Clerk, and let Counsel have them now. [254]

(Exhibits were handed to Mr. Morrow.)

Mr. Morrow: I wish to have exhibits marked.

The Clerk: It will be Respondent's A-4.

(Deck cable report was marked Respondent's Exhibit No. A-4 for identification.)

Mr. Morrow: I will offer that exhibit in evidence, being the deck cable report of the cable ship Basil O Lenoir for the period in question, namely, March 23, 1955 to March 29, 1955 inclusive, one of the documents which came off the vessel Lenoir and was produced at a recent deposition of Captain Bowen.

The Court: The dates and the month are what, the 23rd to——

Mr. Morrow: The 23rd to the 29th of March, 1955.

The Court: Any objection?

Mr. Mikkelborg: No objection.

The Court: This report, A-4, is now admitted.

(Respondent's Exhibit No. A-4 for identification was admitted in evidence.)

Mr. Morrow: I would like to have produced and marked for offer into evidence at this time the cable report of the ship Lenoir for February, 1953 damages to the Fort Lawton-Seattle cable.

The Court: Have you demanded that before?

Mr. Morrow: I have seen it before, yes, your Honor.

The Court: Have you demanded it before?



(Testimony of John H. Bowen.)

Mr. Morrow: Yes, and I have asked——

The Court: Who has it?

Mr. Morrow: Captain Bowen has it, or did have it the last time I saw it.

The Court: You should ask Counsel for it.

Mr. Morrow: I meant to ask Counsel for it.

The Court: Then demand is made of Counsel for the libelant for that material. Do you have it ready to produce now?

Mr. Mikkelborg: Yes, the witness will produce it.

The Court: Very well.

The Witness: May I be excused?

The Court: Yes, you may step down. Try to finish so that you will have a reasonable time to take up the other witness and finish by 4:30.

(The witness produced a document.)

The Clerk: It will be marked Respondent's Exhibit A-5.

(Cable report was marked Respondent's Exhibit No. A-5 for identification.)

Mr. Morrow: I would like to have produced [256] and marked in accordance with a previous request for production the log of the cable ship Lenoir covering the 1953 cable break of the Seattle-Fort Lawton cable.

The Court: January of 1953?

Mr. Morrow: February of 1953, your Honor.

The Court: A-5 commences in January, or is it February? A-5 relates to January or February of 1953?



(Testimony of John H. Bowen.)

Mr. Morrow: The period covered in the log in question——

The Court: A-5, referring to A-5.

Mr. Morrow: Yes, is December, 1952 through March, '53.

The Court: I think you are talking about something different. That is probably A-4 that you refer to.

(Pilothouse log book was marked Respondent's Exhibit No. A-6 for identification.)

Mr. Morrow: No, this is A-6, the 19——

The Court: Hand that exhibit to Counsel, A-6. Demand has been made for a log book.

Mr. Morrow: Yes. I have it here, your Honor, the 1953 log of the Lenoir.

The Court: That has been marked as Respondent's Exhibit A-6. There had previously been marked [257] Respondent's Exhibit A-5, which is supposed to refer to January cable damage.

Mr. Morrow: I offer the 1953 log in evidence, it being Respondent's Exhibit A-6.

The Court: Is there any objection?

Mr. Mikkelborg: No objection.

The Court: It is admitted.

(Respondent's Exhibit No. A-6 for identification was admitted in evidence.)

The Court: Have you offered A-5?

Mr. Morrow: A-5 has been offered.

The Court: Is there any objection?

Mr. Mikkelborg: No objection.

The Court: Admitted.

(Testimony of John H. Bowen.)

(Respondent's Exhibit No. A-5 for identification was admitted in evidence.)

Mr. Morrow: That's all the exhibits I have to produce for marking at this time, your Honor, for use with this witness. Now I would like to have the witness handed first the permit for installation of this cable by the United States Army, being Libellant's Exhibit 5.

(The exhibit was handed to the witness.)

The Court: Proceed.

Mr. Morrow: And also Respondent's Exhibit A-1, being the chart of the cable area, 6449.

(The exhibit was handed to the witness.)

### Cross Examination

Q. (By Mr. Morrow): Now, Captain Bowen, with the permit before you, Exhibit 5, and the chart, can you establish the original position and line of the Alaska Communication's cable between Seattle and Fort Lawton?

A. I could with the proper instruments, yes.

Q. All right.

The Court: How much time will this take?

Mr. Morrow: This will take——

The Court: Can you not ask him what it is with reference to the——

Mr. Morrow: Well, I can ask him what the bearing is from the sea wall at Pier 57, but it will not mean anything, your Honor, unless it is drawn on the chart.

The Court: You can have him draw it on there

(Testimony of John H. Bowen.)

during some recess period. I want the libellant's case in chief rested this afternoon. It ought to be done by 4:30.

Mr. Morrow: This being in the nature of the respondent's case, if I have the privilege of recalling [259] this witness——

The Court: You may do that.

Mr. Morrow: I would like to.

The Court: You may do that, but I do not wish to receive experimentations in court. Have him make the experimentation on the outside, if it is permitted, if it is respecting an exhibit in court. You cannot mark up an exhibit outside of the courtroom without the permission of the Court during recess periods. Is there anything else you wish to ask this witness?

Mr. Morrow: Yes, your Honor, but in connection with your Honor's statement I would like to have permission to have this witness put——

The Court: Is there any objection to that, to plot this position where he first laid the cable at a certain time?

Mr. Morrow: There are three things I would like to have the witness put on this chart, the original position of the cable in 1959——

The Court: '49, you mean '49.

Mr. Morrow: Thank you. '49. I'm sorry. The position of the cable when relaid in 1953, and the two positions of the broken ends of the cable in March, 1955.

The Court: Is that clear, Captain? [260]

(Testimony of John H. Bowen.)

A. That is clear, sir.

The Court: Very well. Is there any objection to that being done during a recess period?

Mr. Mikkelborg: Insofar as the witness is able to do it. The witness has testified on direct that he does not——

The Court: Then I ask you to do that if you can at the next recess. Proceed.

Mr. Morrow: Thank you.

Q. (By Mr. Morrow): Captain Bowen,——

The Court: You may do that on that exhibit mentioned by Counsel.

Q. (By Mr. Morrow): Captain Bowen, you have expressed an opinion to the effect that the Fort Lawton-Seattle cable had been disturbed and had been moved, and I think you said slightly. Now, is it true that your opinion was based upon your observation of the cable? Was that one of the factors you took into consideration?

A. Yes, that may have influenced my opinion.

Q. And your testimony of your observation of the cable was that the outer jute was torn for a distance of 500 feet from the end and scored another hundred feet?      A. No, sir.

Q. What is your testimony?

A. I'll repeat it, sir. The outer jute covering was peeled [261] off for a distance of 500 feet.

Q. Yes.

A. The last 100 feet of which the steel armors were also badly scored.

Q. I see.

(Testimony of John H. Bowen.)

Mr. Morrow: That's all, your Honor. On my case I will want to establish these different positions.

The Court: Do you wish this witness to remain in attendance?

Mr. Morrow: Yes, subject to marking the chart.

The Court: Is there anything further from this witness?

Mr. Mikkelborg: No, your Honor.

The Court: You may be excused.

(Witness excused.)

The Court: Call the libelant's next witness.

Mr. Mikkelborg: The libelant will call Captain Howell.

#### ALBERT S. HOWELL

called as a witness in behalf of libelant, being first duly sworn, was examined and testified as follows:

#### Direct Examination

Q. (By Mr. Mikkelborg): Will you please state your full name, sir? [262]

A. Albert S. Howell.

Q. What is your address?

A. 503 West McGraw Street, Seattle.

Q. What is your occupation, sir?

A. I'm retired.

Q. What was your occupation prior to your retirement? A. Master mariner and pilot.

Q. How long were you occupied in those capacities? A. Which one?

(Testimony of Albert S. Howell.)

Q. Well, start with master mariner.

A. Well, I received my master's license in 1910, and in 1912 I was in command of a ship and I was in command of successive ships until 1922, and then I come ashore and went to be a pilot, and for '22 to '45 I was a pilot here on the Sound.

Q. What type of ships have you commanded, Captain?

A. Well, principally freighters, 450, 475 feet.

Q. In connection with your—by the way, Captain, how many years were you occupied as a pilot?

A. Twenty-two and a half.

Q. And where were you so occupied?

A. Puget Sound and adjacent inland waters including Lake Washington.

Q. What type of ships did you handle during your service as a pilot? [263]

A. Everything that was floating, airplane carriers, torpedo boats, battleships, freighters and tug-boats and anything that needed a pilot.

Q. Did that include passenger ships?

A. Yes, if they needed one I was there.

Q. How many ships do you estimate that you've handled as a pilot?

A. Well, from twenty to thirty a month.

Q. For how many years?

A. The total time, twenty-two and a half.

Q. Have you had any military service, Captain?

A. Thirty-nine months in the First World War, run an ammunition ship from Norfolk to France.

Q. And what service in World War II, if any?



(Testimony of Albert S. Howell.)

A. I was inducted into the Coast Guard, Lieutenant Commander.

Q. And what service did you perform in the Coast Guard?

A. They put me on as a test pilot to run the destroyers they were building at Todds and the air-plane carriers they were building in Tacoma.

Q. What license do you hold at the present time, Captain?      A. Ocean master unlimited.

Q. Do you recall how many issues of that license you have had?

(Witness refers to document.)

The Court: Do you admit this witness' [264] qualifications?

Mr. Morrow: We admit he is a qualified master Mariner. He has held his——

A. Eight and ten, eight issues and the tenth license.

Q. (By Mr. Mikkeltorg): Have there ever been any actions against you or your license, Captain?

A. No, none.

Q. All right. Captain Howell, assuming that a ship some 320 feet overall in length of a passenger ship design, 4,032 gross tons, with a beam of 48 feet, powered by reciprocating engines, conventional single screw, assume that such a ship is attempting a landing at Pier 64 in Seattle, and assume further that the landing is required or attempted during a southerly gale of winds of 35 and up to 40 miles an hour with choppy, rough surface conditions from such wind; further assume

(Testimony of Albert S. Howell.)

that the tide has been flooding and is approximately high water with a 9.3 foot tide; further assume that the docking is required to be made on the south face of Pier 64 with this southerly gale and that the pier has a west face of approximately equal length with that of its south face, and assume that south of the required mooring at Pier 64 at a distance of some seven or eight hundred feet is a marked and charted cable area. Assume further that such a ship as I have described attempts to dock [265] using its starboard anchor as it approaches the dock, having turned from its approach out of the northwest, having turned to its port side or left from the southernmost point of its approach, which would have been somewhat upwind or further into the gale from Pier 64.

Captain Howell, based on your experience and knowledge of ship handling and seamanship do you have an opinion as to whether or not such an attempt to land such a ship in this manner under those conditions represents the proper maneuver of a reasonably prudent ship master and ship handler?

Mr. Morrow: I object to the form of the hypothetical question because it includes facts I think which are not in evidence. It is rather long. I haven't had a chance to——

The Court: That objection is overruled. Do you object to it on the ground that the concluding question part of it is leading, the statement of the con-

(Testimony of Albert S. Howell.)

cluding part of the question, that part which is the question?

Mr. Morrow: Yes.

Mr. Mikkeltorg: I'll rephrase that, if the Court please.

The Court: It is just those last few words.

Mr. Mikkeltorg: Yes, your Honor. [266]

The Court: You could ask him first if he has an opinion regarding the matter of whatever the aspect of it is you are inquiring about.

Mr. Mikkeltorg: Yes, your Honor, I should have done so.

Q. (By Mr. Mikkeltorg): Captain Howell, under the circumstances which have been described in that question do you have an opinion with respect to the manner of docking such a ship?

A. Do you want to know how I would go about the job?

The Court: No. No, that is not the question. He wants to know if you have an opinion. You will have to say what aspect of the opinion you wish.

Q. (By Mr. Mikkeltorg): Do you have an opinion in connection with the——

The Court: You will have to state on what question.

Q. (By Mr. Mikkeltorg): Do you have an opinion, Captain, on the facts posed to you in that hypothetical question?

The Court: As to what?

Q. (By Mr. Mikkeltorg): As to the maneuver in docking by the ship outlined in the question.

(Testimony of Albert S. Howell.)

The Court: Do you mean as to whether it was a safe docking, safe for the cable or a necessary maneuver, or what do you mean? [267]

Mr. Mikkelborg: As to whether that was a prudent maneuver.

The Court: You may ask him that.

Q. (By Mr. Mikkelborg): Do you have an opinion as to whether that was a prudent maneuver?

A. I would never have let the ship——

The Court: Just answer yes or no.

A. Yes, I have, yes.

Q. (By Mr. Mikkelborg): What maneuver or maneuver of docking——

The Court: No, he has not stated what his opinion is yet.

Mr. Mikkleborg: Very well.

Q. (By Mr. Mikkelborg): Would you state your opinion, Captain?

A. I would never get upwind on the dock that I was going to dock at. You can't control the ship that way.

Q. Would you describe the maneuver that you would undertake under those circumstances?

A. I would come in on an angle to the corner of the dock where I was going in and make a landing on the face of the dock, run a headline around the corner of the dock and break around the corner, which I've done hundreds of times down on the Seattle waterfront.

Q. Would such a maneuver cause you to come south of the [268] pier and upwind?

(Testimony of Albert S. Howell.)

A. Oh, no, no, no, no, that's out, you don't do that business at all. You just get up abreast of the pier and let her sag over, let her sag over and make a landing on the corner of the dock.

Q. From what direction would you approach the pier under those circumstances?

A. Oh, at about a forty-five degree angle.

Q. From what direction?

A. Well, it would be about west, it would be about west, but never get downwindward of the dock where you're going in. That's the dock where you're going in, and if you get up there the wind will take a hold of you and you can't control her then, it will add power to you and get you going, and if sagging in on the corner of the dock you can't control her bow with the wind blowing her over, just drop her anchor on the foot. That way you'll line her up on the face of the dock and you'll get around the corner of the dock, and there's nothing to it.

Q. In any event would you make an approach to the south of the dock and come downwind?

A. Oh, no, that's out. I never did that. That was a single screw ship.

Q. In your opinion, Captain, under those circumstances [269] would an approach from the upwind side of the dock or from the south or southeast or southwest be a proper or an improper maneuver?

A. It would be very difficult to handle the ship that way. I wouldn't be able to do it myself. I'd



(Testimony of Albert S. Howell.)

never get in that position because I couldn't handle the ship. Coming into that dock which you're talking about you're making a port landing.

Q. By "handling the ship" do you mean controlling the ship?

A. That's right, keeping control of the ship instead of letting the ship control you.

Mr. Mikkelborg: You may cross examine.

### Cross Examination

Q. (By Mr. Morrow): Captain Howell, do you have in mind docking the ship on the face of the dock, or——

A. Absolutely, that's right. With a southerly wind we do it all the time.

Q. Do you know whether or not the dock would accommodate the discharge of passengers on the face of the dock?

A. You don't need to discharge them there. You're going into the berth around the corner, but that's only preliminary to making the landing. Surely you can discharge them on the face of the dock. All you've got [270] to do is put out a gangway.

Q. In other words, what you would do would be to put a line onto the dock and then warp the ship around?

A. That's exactly what we used to do.

Q. When did you do that, Captain?

A. All the time I was here, and I've made a



(Testimony of Albert S. Howell.)

landing on every dock on the Seattle waterfront, not once but dozens of times.

Q. You've been retired since 1945, have you?

A. That's right.

Q. Did you ever dock a ship at Pier 64?

A. I have, yes, that's right.

Q. Now, you've been on the Seattle waterfront for a good many years, haven't you, Captain?

A. Twenty-two and a half.

Q. And you've undoubtedly observed the Princess boats of Canadian Pacific dock there many times?

A. That's right.

Q. And you've undoubtedly seen them dock in a southeast wind, have you not?

A. That's right, that's right.

Q. Now, did you ever make any complaint or protest as to that particular method of docking which they use?

A. No, because most of them, when the big boats was on they were twin screw, and that's quite simple to do. [271]

Q. I see.

A. But with a single screw ship, that's a different matter.

Q. But at least you never made any complaint as to docking in the manner which the Princess boats usually docked, have you?

A. Any complaint?

Q. Yes.

A. No, I had no complaint to make. They were doing the docking, not me.

(Testimony of Albert S. Howell.)

Mr. Morrow: I have no further questions.

Mr. Mikkelborg: No further questions.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Mikkelborg: The libelant has no further witnesses.

The Court: Does it rest its case in chief?

Mr. Mikkelborg: May I have one moment, if the Court please?

The Court: Yes. The exhibits, I call your attention that Libelant's Exhibits 1 and 2 and 5 and each and all of them have been admitted, but no other libelant's exhibits have been, and in particular Libelant's Exhibit 3 was admitted, was stricken and has not been readmitted, the objection to it was [272] sustained. Libelant's Exhibit 4 has not been admitted.

Mr. Mikkelborg: The libelant will reoffer all libelant's exhibits including Exhibits 3 and 4.

The Court: Do you make the same objection?

Mr. Morrow: The same objection.

The Court: As to 3 the objection is sustained. I would like to be reminded of what 4 is. I do not know what it is at this moment.

Mr. Mikkelborg: Libelant's Exhibit 4 was the duplicate original of a charter party agreement between Alaska Communication System and American Telephone & Telegraph.

The Court: It concerned a repair job which was not occasioned by this accident, is that right?

Mr. Mikkeltorg: It did not concern any repair job, if the Court please, it concerned——

The Court: What did it concern, then? This I understand is some kind of a repair job that is being sued for here. What did it concern then if it did not concern a repair job?

Mr. Mikkeltorg: This is indeed a repair which caused damages to the libelant with which we are concerned. Libelant's Exhibit 4 was a charter agreement reflecting the per diem cost of the cable ship employed in the repair concerned in this case, the per diem cost [273] of which was derived contemporaneously with the repair in this case and which was executed subsequent to the accomplishment of the repair in this case.

The Court: What is the objection?

Mr. Morrow: The objection, your Honor, is that it is a 1956 charter party between the government and a third party, and it has no relevancy or materiality in connection with the proof of the libelant's damages for repairs which were made in 1955.

Mr. Mikkeltorg: If the Court please, it is relevant and material to the proof of the libelant's damages in March of 1955 because the libelant here has adduced testimony particularly through Sergeant O'Brien to show that the cost per day figure to the libelant of the employment of the cable repair ship Lenoir was \$1,500 and that cost was adduced at the time including the time of the repair with which we are here concerned and was the figure used in a

charter made available to American Telephone & Telegraph on a cost basis, at no profit and at no loss to the libelant, on figures derived at the time in question here.

The Court: Does respondent's Counsel understand as I do that the libelant's Counsel has just said that the contract was made so that the repairs made necessary by the alleged accident here involved could be [274] accomplished.

Mr. Morrow: Could be what?

The Court: In effect that is what he says was the situation here, does he not?

Mr. Mikkelborg: No, if the Court please. May I clarify that? That is not my intention, to state that. It is the libelant's position with respect to libelant's proposed Exhibit 4 that libelant's proposed Exhibit 4 is an agreement reflecting the per diem cost of the Lenoir when made available to an outside agency; that that per diem cost to the government, no profit and no loss, was derived during the same period of time with which we are here concerned, the period of time in which the Lenoir was employed in the repair of the Seattle-Fort Lawton cable, and it is a true reflection of the per diem cost to the libelant of the Lenoir's employment. It is the same cost that was utilized in making the Lenoir available to the American Telephone & Telegraph Company.

The Court: I understood that was the situation previously and I understand it now, and the objection is sustained. I would like you satisfactorily to

yourself to assign a name to the document, Libelant's Exhibit 4.

Mr. Mikkelborg: The document is the Alaska Communication Service-American Telephone & Telegraph [275] Company time charter party for the cable ship Basil O Lenoir.

The Court: 1956?

Mr. Mikkelborg: Executed in 1956.

The Court: As I understand, the libelant rests. Is that right?

Mr. Mikkelborg: The libelant does rest, yes, your Honor.

The Court: How many witnesses does the respondent expect to call?

Mr. Morrow: I'll just count them up, your Honor.

The Court: Can you finish tomorrow? We had an assignment of a trial of two days. We have already used two days and the libelant has just now finished.

Mr. Morrow: Yes. I have the master of the Princess Louise, the chief and the second officer, and the man on the anchor windless, Mr. Stiles of Alaska Communication System, a brief witness for identification, and I have Captain Bowen.

The Court: You can finish tomorrow, can you not?

Mr. Morrow: I'll try my best, your Honor.

The Court: Very well. Court is recessed until tomorrow morning at 10:00 o'clock. Those connected [276] with this case may now retire.



Mr. Broz: May I address the Court, your Honor, briefly?

The Court: Before the recess you may do that.

Mr. Broz: If it please the Court, I request an excuse from further appearance in this trial, the government having rested.

The Court: Is there any objection?

Mr. Morrow: No objection, your Honor.

The Court: The Court has none.

Mr. Broz: Thank you, your Honor.

The Court: The recess now becomes effective.

(Thereupon, at 4:35 o'clock p.m., a recess herein was taken until 10:00 o'clock a.m., Thursday, August 21, 1958.)

Thursday, August 21, 1958. 10:00 o'clock a.m.

(All parties present as before.)

The Court: In the case on trial are Counsel and the parties ready to proceed?

Mr. Morrow: Ready, your Honor.

Mr. Mikkelsen: Ready, your Honor.

The Court: The respondent may now proceed [277] with its case in chief.

Mr. Morrow: Your Honor, at this time I would like to have marked a list of respondent's exhibits.

The Court: You may do that.

Mr. Morrow: I have a list here, a typed list, which is marked up a bit but I think will be of assistance to the clerk or the Court in making reference to the exhibits. I believe the next number is A-7, the pilothouse log of the Princess Louise.



The Clerk: It will be marked Respondent's Exhibit A-7.

(Pilothouse log of Princess Louise was marked Respondent's Exhibit No. A-7 for identification.)

The Court: Will you call a witness to the stand, please, if you wish to proceed?

Mr. Morrow: Yes. I'll call Captain—there are more exhibits.

The Court: I wish to have a witness called.

Mr. Morrow: Very good. Captain Bowen.

The Court: The witness has already been sworn. He will resume the stand.

#### JOHN H. BOWEN

resumed the stand as a witness in behalf of respondent. [278]

The Court: What exhibits do you wish marked that have not been? Has this log book not been marked by the clerk of this court during this trial before?

Mr. Morrow: That's right, your Honor.

The Clerk: No, your Honor.

The Court: Pardon?

The Clerk: No, your Honor. I just marked it.

The Court: What is it?

Mr. Morrow: Pilothouse log of the Princess Louise.

The Court: Mr. Clerk, what clerk's number is assigned to this particular exhibit?

The Clerk: A-7, your Honor.

The Court: Do you offer A-7 in evidence?

(Testimony of John H. Bowen.)

Mr. Morrow: Yes, I do, your Honor.

The Court: Any objection?

Mr. Mikkelborg: No objection, your Honor.

The Court: It is admitted.

(Respondent's Exhibit No. A-7 for identification was admitted in evidence.)

The Clerk: Respondent's Exhibit A-8.

(Engine room log of Princess Louise was marked Respondent's Exhibit No. A-8 for identification.)

Mr. Morrow: The next exhibit—— [279]

The Court: Wait just a moment. The clerk here has something that is contained in an envelope. It is a larger envelope than the other one. It seems to have on the outside of the envelope these words: "Engine room log of the Princess Louise." Is that——

Mr. Morrow: Yes, your Honor. The log is falling apart, so I put it in the envelope and marked it on the outside.

The Court: The marking is now confirmed as A-8.

Mr. Morrow: I offer Exhibit A-8, the engine room log of the Princess Louise, in evidence.

Mr. Mikkelborg. The libelant has no objection, your Honor.

The Court: It is now admitted.

(Respondent's Exhibit No. A-8 for identification was admitted in evidence.)

The Court: Have you another exhibit at this time?

(Testimony of John H. Bowen.)

Mr. Morrow: Yes, your Honor.

The Clerk: It's marked A-9, your Honor.

(Port of Seattle map of Seattle Harbor was marked Respondent's Exhibit No. A-9 for identification.)

The Court: Do you have a name that you think [280] is suitable?

Mr. Morrow: Yes. A-9 is identified as the Port of Seattle map of Seattle Harbor.

The Court: Who made the map, if you know, what concern or organization, and by what authority was the proposed exhibit issued?

Mr. Morrow: It's from the files of the Port of Seattle.

The Court: So it is Port of Seattle map——

Mr. Morrow: Of the Seattle harbor.

The Court: And what is the number of that exhibit?

The Clerk: A-9, your Honor.

The Court: Do you offer that?

Mr. Morrow: I offer A-9 in evidence, your Honor, for the purpose of showing the pier numbers and the streets of the City of Seattle in order that the harbor and the piers may be identified as to pier number and streets.

The Court: That all could be done by putting a name of a pier that does not appear already on Chart 6449.

Mr. Morrow: Yes, there are no——

The Court: Then having a line ending up in a certain point pointing to that pier and giving it

(Testimony of John H. Bowen.)

some [281] additional name and you would not have this multiplicity of exhibits.

Mr. Morrow: Well, your Honor, I attempted just that and——

The Court: For instance, up to this moment I have not heard a single witness or a single voice refer in any way to any relationship between a dock or any one of these docks which have been mentioned in the evidence and what we all refer to every day as the Canadian Pacific Dock in Seattle, and I suspect that this vessel was making for that dock when it was trying to land because the vessels of this respondent have been using one dock known by a certain popular name by the public of Seattle for a number of years.

Mr. Mikkelborg: May I be heard, if the Court please? I respectfully submit to the Court that identification by such a name has been made in the record at this point.

The Court: Very well, then the Court omitted to note it and does not recall it having been done.

Mr. Mikkelborg: I respectfully object to the admission of the proposed Exhibit A-9 on the ground that it is not an instrument such as is already in evidence in the form of the Mercator projection Coast and Geodetic Survey charts which are extremely accurate. This article [282] now offered is a reproduction of some kind, apparently an enlargement or blowup of some other source, and there is no way of vouching for its accuracy. It is

(Testimony of John H. Bowen.)

unnecessary and in addition to material already in evidence in the form of documentary exhibits.

Mr. Morrow: May it please the Court, this is an exhibit which is admitted by the pretrial order and agreed that it should be admitted in evidence as a subject of the pretrial conference.

Mr. Mikkelborg: If that is the case, if the Court please, I am in error and I withdraw the objection.

The Court: Is there in respect to any exhibit a pretrial order effect different from that thing's effect on all the exhibits listed in it? My understanding of the pretrial order was that so far as authentication is concerned, those who approved the order and the Court in making it were all satisfied with the authenticity without any further proof.

Mr. Morrow: That's right.

Mr. Mikkelborg. That is correct, your Honor.

The Court: And that unless there was some other objection on substantial grounds and not on formalized grounds going to materiality or other competency relating to the merits of the exhibit, that the pretrial order would be sufficient and that such [283] sufficiency was only respecting the authenticity of the document, it did not determine the admissibility of the document.

Mr. Mikkelborg: That is correct. I withdraw the objection on the grounds stated. I'm seriously in error. That item was so identified. It is what it purports to be. However, the objection I do make at this time is as to the materiality or the



(Testimony of John H. Bowen.)

necessity of this in addition to the other charts already in evidence.

The Court: The Court usually regards the fact of ballooning an exhibit as a very important fact bearing on its admissibility. I do not see any unreasonable enlargement of scale in respect to this map, Mr. Mikkelborg, and the Court overrules the objection and does admit this exhibit in evidence.

(Respondent's Exhibit No. A-9 for identification was admitted in evidence.)

The Court: Now at this point for the Court's convenience would you try to recall the witness and the words of the witness who in the course of his testimony referred to one of these docks by a popular name?

Mr. Mikkelborg: It is my recollection that Colonel Rogers referred to the CPR Dock, that Mr. Langworthy made mention of the CPR Terminal and the Princess vessels' dock. [284]

The Court: Did any person relate that popular name to a dock bearing a number, referring to it by a number, in this case? If so, what was said in that connection? I want to be reminded of it. That was the point about it.

Mr. Mikkelborg: Yes. I believe the record will show——

The Court: That was the point about the Court's statement. I did not recall any identification of the dock in question with the popularized name of the dock used by this respondent company in Seattle.

Mr. Mikkelborg: Yes. If the Court please, those



(Testimony of John H. Bowen.)

witnesses mentioned referred to it as Pier 64 and also as the Canadian Pacific or CPR Dock, to the best of my recollection.

The Court: The Court will accept Counsel's recollection and displace the Court's previous lack of registering that information. The definite ruling on the offer of this Exhibit A-9 is that it be admitted. It is admitted for the limited purpose stated by Counsel, namely, to show the pier number and the city street identification.

Mr. Morrow: Yes, your Honor. I really believe that Counsel and the Court will find it of great convenience. [285]

The Clerk: Respondent's A-10.

(U. S. Coast and Geodetic Survey sounding chart was marked Respondent's Exhibit No. A-10 for identification.)

Mr. Morrow: A-10, your Honor, was a subject of the pretrial order listed under libelant's exhibits, Exhibit L-2, has now been marked Respondent's Exhibit A-10, is offered in evidence.

The Court: Can you give it a name that does reflect the character of the information contained in the exhibit.

Mr. Morrow: Yes. It is a sounding chart prepared by the United States, I believe, Coast and Geodetic Survey Service and contains in minute details the soundings and particularly the soundings and depth of water in the area in the vicinity of Piers 57 and 64 inclusive.

The Court: It has a certificate attached to it

(Testimony of John H. Bowen.)

bearing the seal of the office of the Secretary of the Department of Commerce of the United States. I wish Counsel to take the exhibit and look at the information reflected by it and the nature of it and the location of the objects dealt with by the material or by the information on the exhibit, beginning at the upper left-hand corner of the exhibit and extending [286] clear across the face of the exhibit to the right-hand limit of the statement of the information sought to be reflected on the exhibit.

Mr. Morrow: Yes, your Honor, and for the purpose of the record and further identification, this is an exhibit which is certified as being a copy of the original Hydrographic Survey H-5864 made in 1935 including additional work done in 1936 on file in the U. S. Coast and Geodetic Survey, and——

The Court: Is it true that that statement means that it is a water depth chart of the waters which are involved from Smith Cove on the north to some point on the south?

Mr. Morrow: To East Waterway, yes, your Honor, covering the water from Smith Cove to East Waterway in Elliott Bay, Washington.

The Court: Would that be a Coast and Geodetic Survey record? Is it or is it not a Coast and Geodetic Survey record?

Mr. Morrow: Yes.

Mr. Mikkelsen: It is, your Honor.

The Court: I have marked it a 1935-'36 Coast and Geodetic Survey water depth chart.

(Testimony of John H. Bowen.)

Mr. Morrow: Yes, and the exhibit is offered in evidence. [287]

The Court: Any objection?

Mr. Mikkelborg: The libelant has no question whatever regarding the authenticity of the document but questions its materiality and relevancy at this time in view of other similar records of water depths which are already in evidence.

The Court: May I ask offering Counsel, for what purpose not already served by other exhibits do you offer this one?

Mr. Morrow: Yes, your Honor. This is a situation where the cartographer for the United States who has been on the stand here used this particular exhibit in the preparation of a depth of water curve and is a basic document which will support his testimony offered on behalf of the respondent and in connection with his establishment of an 180 foot depth of water in the area and vicinity of the Seattle-Fort Lawton cable involved in this case.

The Court: That would indicate to me offhand the propriety of this question: Is there any dispute about how deep the water was here?

Mr. Morrow: There is no dispute about how deep the water was but it is important to the respondent's case to show the curve of the 180 foot mark as related to the depth of the cable in the water and the depth of [288] the anchor from the surface of the water.

(Testimony of John H. Bowen.)

The Court: Do you say that this chart bears upon that subject?

Mr. Morrow: Yes, your Honor.

The Court: Do you deny it?

Mr. Mikkeltorg: There is evidence already in concerning the depth of water and the depth of the anchor.

The Court: That may be, but do you deny that this chart bears on that subject?

Mr. Mikkeltorg: I understand that it bears on the depth of the water and the depth of the water out by the anchor chain of the Princess Louise. It is cumulative.

The Court: It forms the basis of a curve outlining the depth of water in this area, is that right?

Mr. Mikkeltorg: Yes, your Honor.

The Court: The objection is overruled. Respondent's Exhibit A-10 is now admitted.

(Respondent's Exhibit No. A-10 for identification was admitted in evidence.)

Mr. Morrow: At this time I would like to have marked a Coast and Geodetic Chart No. 6449.

The Court: Is this a third or only the second—

Mr. Morrow: This is one from the Princess Louise, your Honor.

The Court: Is this the third or the second of [289] that numbered chart, or is it the first one?

Mr. Morrow: This is the second.

The Court: Why do you wish to offer this?

Mr. Morrow: This, your Honor, is an agreed

(Testimony of John H. Bowen.)

exhibit which has been marked by Captain Campbell of the Princess Louise showing his maneuvers.

The Court: When did he do it?

Mr. Morrow: Well, he did it prior to the trial and it has been——

The Court: And after the accident?

Mr. Morrow: Yes, your Honor. It will be illustrative, offered only as illustrative of his testimony rather than have him mark the chart on the stand.

The Court: I assume you are going to call him as a witness as expressly indicated by your not cross examining him when he was on the stand previously.

Mr. Morrow: No, your Honor, Captain Campbell is the captain of the Princess Louise.

The Court: Was not that captain on the stand?

Mr. Morrow: Yes, he was, your Honor. You're quite right.

Mr. Mikkelborg: This is not, as I understand it—this exhibit has been previously marked by a witness, it is not one that has been agreed to in the pretrial. [290]

Mr. Morrow: No, this is the exhibit which I showed——

The Court: The court will have to wait and see if it is admissible.

The Clerk: Shall I mark it, your Honor?

The Court: Do you not think it would be better to wait until that witness is on the stand?

Mr. Morrow: All right. May we have it marked then?



(Testimony of John H. Bowen.)

The Court: In the meantime offering Counsel will exhibit it to opposing Counsel to give him an opportunity of familiarizing himself with it. I do not wish to interrupt your proceedings now, but if libelant's Counsel feels that he may properly give that sort of attention to it now while you are proceeding with the other exhibits, you may do so. I mean proceeding with other matters.

Mr. Morrow: Yes, your Honor.

(Mr. Mikkelborg examining chart referred to.)

The Court: In view of the fact that it all may be so quickly obviated when and if that witness takes the stand I do not wish to pause longer.

Mr. Morrow: Yes. May we just have it marked at this time then, your Honor, and I will—— [291]

The Court: I think it would be more logical and in better sequence if you let that await the witness' taking the stand.

Mr. Morrow: Very well. Now I would like to reoffer in evidence at this time Respondent's Exhibit A-2, being a Coast and Geodetic chart marked by William M. Martin, a United States cartographer, showing a curve of 180 foot depth marked.

The Court: Is there any objection to the offer?

Mr. Mikkelborg: There is no objection to the authenticity. I again——

The Court: Is that a third or just a second——

Mr. Mikkelborg: This is the third of that number.



(Testimony of John H. Bowen.)

The Court: Of Coast and Geodetic Survey Chart No. 6449.

Mr. Mikkeltorg: It is my understanding of the state of the record that that is the third one of this particular number.

The Court: It is the third one referred to. I do not know whether there have been two before this marked or not.

Mr. Morrow: This was the second one that has been previously marked as Respondent's Exhibit A-2.

The Court: I am not—— [292]

Mr. Morrow: This exhibit, your Honor, is one which was prepared at the request——

The Court: It is another Coast and Geodetic Survey Chart 6449 and I assume it is the second one. It has "A-2" on it.

Mr. Morrow: Yes, your Honor.

The Court: Why is it necessary for another identical 6449 numbered chart to be offered in evidence?

Mr. Morrow: For this reason, your Honor, that to mark the other chart with a curve the witness can do it when he gets on the stand, of course, but I feel that it will interfere with other markings on the other chart, and——

The Court: Then we will see further about it. The Court will not admit it now.

Mr. Morrow: Very well. I am ready to proceed, your Honor.

The Court: You may proceed.

(Testimony of John H. Bowen.)

Mr. Morrow: Would you hand the witness, Captain Bowen, the February 5, 1953 cable report of the ship Basil O Lenoir, it having been previously admitted in evidence and marked Exhibit A-5.

(The exhibit was handed to the witness.)

The Court: That is denominated the cable report of February, 1953, concerning cable damage. You may [293] proceed. The witness has the exhibit now and Counsel may proceed.

Mr. Morrow: I'm a little lost, your Honor. I don't know whether the permit of the 1949 installation has been offered or admitted in evidence. If not, I would like to have a copy marked.

Mr. Mikkelsen: If the Court please, I believe that is Libellant's 5.

Mr. Morrow: Yes.

The Court: It has been admitted.

Mr. Morrow: Yes, Libellant's 5.

The Court: Mark it as admitted so it may be clearly shown.

Mr. Morrow: And also Respondent's A-1 before the witness.

The Court: A-1 has been admitted and you may show it to the witness.

(Respondent's Exhibit A-1 was handed to the witness.)

The Court: Do you wish the permit be shown the witness?

Mr. Morrow: Yes, I think he should have all those documents.

The Court: A-5 is shown to him.

Mr. Morrow: Yes, your Honor. [294]

(Testimony of John H. Bowen.)

Direct Examination

Q. (By Mr. Morrow): Captain Bowen, referring you to Libelant's Exhibit 5, would you state briefly what that exhibit is?

A. It's identified by its heading as a War Department permit for federal agencies.

Q. Does that document indicate the proposed bearing of the Seattle-Fort Lawton cable in 1949?

A. Yes, sir.

Q. What is that bearing?

A. 282 degrees 49 minutes true.

Q. Where does it extend from?

A. From the southwestern tip of Pier 57.

Q. And Pier 57 is at the foot of what street in the City of Seattle?

A. I'm not familiar with the streets in the City of Seattle.

Q. Have you, Captain Bowen, at my request and in the presence of the United States attorney marked on Respondent's Exhibit A-1 the bearing of the proposed cable?      A. May I look at A-1?

The Court: Yes.

A. I don't recall which of those charts it was marked on.

The Court: Look for the clerk's identifying mark.

A. I see it, sir, yes, A-1. Yes, I have. [295]

Q. (By Mr. Morrow): And how is that particular marking of the proposed cable identified on Respondent's Exhibit A-1?

(Testimony of John H. Bowen.)

A. It's a pencilled line identified by the numerals, or by the bearing in numerals 282 degrees 49 minutes.

Q. Now, you have testified that you participated in the laying of the cable in 1949. My question is, was the cable laid in accordance with the United States permit, Libelant's Exhibit 5?

A. To the best of my recollection, yes.

The Court: What is the number of those degrees that you mentioned, 282——

A. 282 degrees 49, or 48——

The Court: You may proceed.

Q. (By Mr. Morrow): Is the cable as laid out on the chart, Respondent's Exhibit A-1, within the marked cable area on the chart? A. Yes, sir.

Mr. Morrow: Would the Court at this time like to look at that particular marking?

The Court: I would rather you go right ahead.

Mr. Morrow: Very well.

A. (By Mr. Morrow): Captain Bowen, you have before you the 1953 cable report of the ship Lenoir marked Exhibit A-5. A. Yes. [296]

Q. Does that exhibit show the coordinates of the cable Seattle to Fort Lawton and the splices as the cable was relocated in 1953 following the casualty?

A. Yes, sir.

The Court: The word "co," "co" something?

Mr. Morrow: Coordinates, coordinates.

The Court: You may proceed.

Q. (By Mr. Morrow): Is that information to be found on the last page of the exhibit?

(Testimony of John H. Bowen.)

A. Yes.

Q. Are the coordinates laid out in terms of latitude and longitude? A. Yes.

Q. Does the last page of the exhibit show the location of the cable as it existed following repairs in 1953? A. Yes.

Q. Between the periods of repair of the cable in 1953 and up to March 20, 1955, was there any relocation of the cable?

A. Not to my knowledge.

Q. When you performed the repairs in March, 1955 the information you used concerning the whereabouts of the Seattle-Fort Lawton cable was contained, was it not, on your cable report, Respondent's Exhibit A-5? A. Yes. [297]

Q. To the best of your knowledge prior to damage to the cable in March, 1955 the Fort Lawton-Seattle cable laid just as illustrated on the last page of Respondent's Exhibit A-5, is that not correct?

A. Yes, to the best of my knowledge.

Q. Captain Bowen, at my request and in the presence of the United States Attorneys did you transpose the information as to the position of the 1953, or the 1953 position of the Seattle-Fort Lawton cable from Exhibit A-5 and the last page thereof to the Chart 6449 marked as Respondent's Exhibit A-1? A. Yes, sir.

Q. Now, how is the 1953 location of the Seattle-Fort Lawton cable identified on Respondent's Exhibit A-1? A. By a red line.

(Testimony of John H. Bowen.)

Q. Is it likewise indicated by tiny circles representing four different circles and four different lines?      A. Yes.

The Court: What is the numerical number, if you know, of the Canadian Pacific Dock in Seattle?

A. Pier 64, sir.

Q. (By Mr. Morrow): Now, are the red lines and the little circles on Respondent's Exhibit A-1 the location to the best of your knowledge of the Seattle-Fort Lawton cable as it existed just prior to the March, 1955 damage? [298]      A. Yes.

Q. Now, Captain, does the mark, the location of the cable, as indicated on Respondent's Exhibit A-1 by red lines and red circles show that the cable extended outside the marked cable area on the chart?

A. It extends beyond the cable area marked on the chart?

Q. Yes.

A. As far as the cable area extends, it's inside the cable area.

Q. Do the red markings of the cable as it existed prior to March, 1955 indicate a northerly turn or bend of the cable across the face of Pier 64?

A. Yes.

Q. Captain Bowen, I would like to have you refer to your cable report of the ship Lenoir for 1955, being Exhibit A-4.

Mr. Morrow: Will you pass that to the witness, please, and the log of the Lenoir, being A-3.

(The exhibits were handed to the witness.)



(Testimony of John H. Bowen.)

Q. Do those two documents show the coordinate or the position in terms of latitude and longitude of the place where the ship Lenoir picked up the broken end of the cable extending from the Seattle shore?

A. No. The ship did not pick up the broken end.

Q. Yesterday in your testimony, Captain Bowen, if I recall [299] correctly, you stated that on the 26th of March at the hour of 0847 the broken end of the cable was brought over the bow of the ship Lenoir and that that was the position of the break from the Seattle end. Is that substantially correct?

A. Yes, sir.

Q. Now, what is the position of the broken end in terms of latitude and longitude as shown by your cable chart and by your log, or by either?

A. We're referring now to the end of the cable on the Seattle side of the break?

Q. That's right.

A. Yes. The position there given in coordinates, you want that read, sir?

Q. Yes.

A. Latitude 47 degrees 36 minutes 29 seconds north, longitude 12 degrees 21 minutes 8 seconds west.

The Court: I would like you to repeat all of that very slowly and give the name and spell that name, the class name of those figures and readings.

A. Latitude?

The Court: No. You used the word "coordinates" and so did Counsel, is that right?

(Testimony of John H. Bowen.)

A. Yes.

The Court: Will you spell that word, please?

A. C-o-o-r-d-i-n-a-t-e-s.

The Court: What does it mean to you?

A. To me it indicates the longitude and latitude given in degrees, minutes and seconds, and labeled as the case may be north, west, east or south.

The Court: Now will you repeat those readings?

A. Latitude 47 degrees 36 minutes 29 seconds north.

The Court: You may proceed.

A. Longitude 122 degrees 21 minutes 08 seconds west.

The Court: Is that all?

A. Yes, sir.

The Court: Proceed.

Q. (By Mr. Morrow): Captain Bowen, at my request and in the presence of the United States attorneys did you plot that position on Respondent's Exhibit A-1? A. Yes, sir.

Q. How is that position indicated on Respondent's Exhibit A-1?

A. By a small blue circle designated by a blue spear and the label "Seattle broken end."

Q. Now,——

The Court: Read the last question and answer, please. [301]

(The reporter read the last question and answer.)

Q. (By Mr. Morrow): Captain, is the position in which you picked up this broken end within the

(Testimony of John H. Bowen.)

marked cable area on the chart, Respondent's Exhibit A-1?

A. No, it's beyond the western extremities of that.

Q. By "beyond" you mean it's outside the marked cable area? A. Yes.

The Court: You now speak of the location of the broken end of the cable picked up by your vessel, is that right?

A. Yes, sir.

Q. (By Mr. Morrow): Is the position of the broken end, Captain Bowen, approximately off the face of Pier 64?

The Court: Is that the CPR dock?

Mr. Morrow: Or the CPR dock.

A. No.

Q. (By Mr. Morrow): Well, generally speaking it is opposite Pier 64, isn't it?

A. It's considerably south of Pier 64.

Mr. Morrow: I will let the Court——

The Court: Is it south of—what did you——

Mr. Morrow: I would like the Court to look at it.

The Court: I will. [302]

(Respondent's Exhibit A-1 was handed to the Court.)

The Court: I have looked at many charts and I do not think I ever saw one where the directions were as poorly and indistinctly pointed out as they are on this chart. I have looked at it. Do you wish the chart returned to the witness?

(Testimony of John H. Bowen.)

Mr. Morrow: Yes, your Honor.

The Court: I wish you would look at the bottom of the chart determined by the proper positioning of the printing that appears on the sheet of paper in regard to the printing and the number of the chart is the bottom end, and I wish you would advise the Court what you understand, both Counsel, are the directions indicated on this chart. Is the up and down direction substantially one cardinal direction as compared with another or is it or is it not so, and if it is not so, in what direction do the cardinal directions run as indicated on that map?

Mr. Morrow: Yes, your Honor.

The Court: Turn the map around, Mr. Clerk, so that Counsel can see the bottom of it.

Mr. Morrow: Yes, your Honor. The——

The Court: Mark on the margin of that map which is north and put an arrow pointing to which is north on the map and mark on it which is south, and so [303] forth. The chart does not give any information that is not noticed by anyone who does not read a chart every day.

Mr. Morrow: Very well. That has been done, your Honor.

The Court: Very well. In other words, the bottom and top are about an accurate position of north and south, is that right?

Mr. Morrow: Yes.

The Court: If you draw a line in the middle of the chart from the top end of the piece of paper on which the chart is stamped to the middle of the

(Testimony of John H. Bowen.)

bottom of it you would go in a southerly direction all the way, is that right?

Mr. Mikkelborg: That's correct, your Honor.

The Court: Proceed.

(Respondent's Exhibit A-1 was handed to the witness.)

Q. (By Mr. Morrow): Captain, referring you to the chart, the position marking the broken end is approximately perpendicular, is it not, to the Bell Street Terminal? Would you like a pair of—

A. I have a protractor here. Yes, it's approximately perpendicular to the face of the Bell Street Terminal.

The Court: Is the position of that broken end cable approximately westward from the face of the dock? [304]

A. No, sir.

The Court: Which direction is it?

A. It would be southwest, your Honor, of the face of the Bell Street Terminal.

The Court: You may proceed.

Q. (By Mr. Morrow): But it is nonetheless perpendicular to the Bell Street Terminal, is it not?

The Court: You mean west of the face?

Mr. Morrow: Yes.

A. Not to the west, sir. Perpendicular.

Q. (By Mr. Morrow): From the face of the terminal?

A. Yes. The face of the terminal runs in a northwest-southeast direction.

(Testimony of John H. Bowen.)

Q. I understand. Now, Captain Bowen, what is the pier number of the Bell Street Terminal?

A. Pier 66, I believe.

The Court: Is it true that it is about three piers from the CPR pier which has been named as what number?

A. Pier 64.

The Court: How many piers away from Pier 64, the CPR dock, is this Bell Street dock?

A. It indicates that it's the next dock.

The Court: But it does not bear the next consecutive number, either less or more than the number [305] of the Canadian Pacific Dock, is that true or not?

A. I'm not positive about the number of the Bell Street Terminal, your Honor.

The Court: You may proceed.

Q. (By Mr. Morrow): Captain Bowen, how far is this broken position that you have marked on Respondent's Exhibit A-1 from the closest marked cable area on the chart?

A. Approximately 450 yards from the western extremity.

Q. And how much is that in terms of feet?

(Witness computing.)

A. 1,350 feet.

Q. Thank you. Captain Bowen, did the cable ship establish a position at which it grappled and picked up the cable extending from Fort Lawton to Seattle?

A. Yes.

Q. Would you refer to your log book, Exhibit



(Testimony of John H. Bowen.)

A-3, to the date of March 26th at the time 0929 and read the entries therein?

A. Following the entry 0929 on the date of March 26th the entry reads, "Telephone cable on deck."

Q. Have you finished?

A. No, sir. "Latitude 47 degrees 36 minutes 35 seconds."

The Court: Please repeat that. I am anxious to get that.

A. Yes, sir. [306]

The Court: The date is when?

A. 26 March. The hour is 0929.

The Court: What year?

A. 1955, your Honor.

The Court: You say the entry is "Cable on deck," is that what you said?

A. Yes, sir, "Telephone cable on deck."

The Court: Then what else?

A. "Latitude 47 degrees 36 minutes 35 seconds, longitude 122 degrees 21 minutes 19 seconds west."

The Court: What was that first one, the latitude? Which direction was that? Does it say anything about north or south?

A. The entry is not made in the log, your Honor.

The Court: Proceed.

Q. (By Mr. Morrow): Do you have a fathometer reading with respect to that entry?

A. Yes, sir.

(Testimony of John H. Bowen.)

Q. What is that?

A. The recorded entry is "Depth, 36 fathom."

The Court: Is that of the water or something else?

A. That's of the water, your Honor.

The Court: You may proceed. [307]

Mr. Morrow: Your Honor, this is one position which the United States Attorneys objected to putting on this chart in the absence of the——

The Court: Now what is it you wish him to do?

Mr. Morrow: I would like to have him fix that position on the chart.

The Court: What he has just stated in latitude and longitude?

Mr. Morrow: Yes, your Honor.

The Court: What is your attitude about his doing that on an exhibit already in evidence?

Mr. Mikkelborg: He may certainly do so.

The Court: The Court would prefer that he use the one already in evidence.

Mr. Morrow: Yes, on this chart he has right there before him.

The Court: He may do that right now.

The Witness: Plot this position, sir?

The Court: Will you state the question or direction to the witness which you wish him to respond to, Mr. Morrow.

Mr. Morrow: Yes.

Q. (By Mr. Morrow): Captain Bowen, will you place the position which you have just indicated, being the latitude 47 degrees 36 minutes 35 seconds

(Testimony of John H. Bowen.)

north, longitude 122 [308] degrees 21 minutes 19 seconds west, on chart Respondent's Exhibit A-1?

The Court: He may do that. In the meantime do both Counsel agree that the latitude is meant to be a north latitude statement?

Mr. Mikkeltorg: Yes, your Honor.

Mr. Morrow: Yes, your Honor.

The Court: The witness indicates he has finished doing what he has been requested to do.

Mr. Morrow: Yes. May I see it?

The Court: You may see that, both Counsel may.

The Witness: It's the point circled in pencil.

Mr. Morrow: I'll have him further identify it, your Honor.

Q. (By Mr. Morrow): Captain Bowen, would you extend a pencil line northerly from the black circle and position which you have just indicated and at the end of the pencil line put the following, if agreeable with Counsel: "Picked up cable extending from Fort Lawton."

Mr. Morrow: Is that agreeable, Counsel?

Mr. Mikkeltorg: Yes.

The Court: He may do that, and after he has done that will you pause for a minute.

(Witness writing on Respondent's Exhibit A-1.) [309]

The Court: I do not see any reason why he could not do this during the recess. Court is at recess for about ten minutes. I wish the witness to have a recess period after he has finished the accomplishment of the last request. Court is now at recess.

(Testimony of John H. Bowen.)

(Short recess.)

The Court: You may proceed. All are present.

Q. (By Mr. Morrow): Captain Bowen, can you state the distance between the position on the chart at which the cable was picked up, that's the cable end extending toward Fort Lawton, and between the position establishing the broken end from the Seattle end, from the Seattle end, from the Seattle side? A. Yes.

Q. What is that distance between those two positions? A. It appears to be 320 yards.

Q. Captain, by examination of your cable report for 1955 and your log can you state the length of the cable that was picked up by the ship Lenoir from the Seattle side?

A. I don't quite understand you, sir. Would you repeat——

The Court: Would you repeat the same words or would you rather explain it?

Mr. Morrow: Yes, I would rather——

The Court: Do you wish this question withdrawn?

Mr. Morrow: Yes, this question is withdrawn.

The Court: That will be done.

Q. (By Mr. Morrow): Captain, I call attention to your — I believe it was your testimony, that in picking up the cable from the Seattle side you cut it off at the sea wall, put it on a drum and then proceeded to the position of the broken end, and the drum contains a rotometer which measures the length of the cable. Do you understand what I'm

(Testimony of John H. Bowen.)

talking about?           A. Yes, sir.

Q. What I have said is a fact, is it not?

A. Not exactly, sir.

Q. Well, would you explain it, then?

A. It's picked up over a drum and passed back into a circular hold where it's coiled by hand. It is not contained on the drum.

Q. But there is a device that measures it?

A. Yes, sir.

The Court: Measures it?

Mr. Morrow: Yes.

The Court: The length of it?

A. Yes, sir.

Q. (By Mr. Morrow): Now, do you recall that the measurement of the cable was 3,450 feet as determined by your calculations?

A. I think that's approximately right. [311]

The Court: Do you mean the part of the cable that was broken off from the main length of cable from its original termini?

Mr. Morrow: Yes, your Honor, the distance from the Seattle side at the sea wall to the broken end was, according to the witness, 3,450 feet.

The Court: Is that what you intended to say?

A. Yes.

The Court: What I would like to know is, Captain, what have you to say as to the possibility that the broken end of the cable which you put aboard your vessel on that occasion may at the moment when you found it to be broken have been withdrawn some distance and, if so, how much distance

(Testimony of John H. Bowen.)

from the place where it was when it parted, if it did part?

A. It did part, your Honor, and it could possibly have been pulled from that position a short distance. The ship is——

The Court: By your vessel's process of taking it aboard your vessel?

A. Yes, sir.

The Court: Continue your discussion, will you please, of that possibility and how much distance it may have been displaced, if it may have been, by the operation of taking the broken piece on board?

A. Yes, sir. We backed clear of the pier with the ship's engines picking up the cable the while and turned with the vessel, put it on approximately the course on which the cable had been laid, continuing to pick the cable up into the vessel, and as the ship continued with way the engines were stopped and the cable was picked up, pulled into the vessel. As the end came aboard the ship——

The Court: That is the broken end?

A. As the broken end came aboard the ship the mate at that time took visual bearings to plot the ship's position and recorded them in the log. The cable could possibly have been pulled a short distance, dragged on the bottom a short distance toward the bow of the ship, and I don't know exactly the interval between the time that end appeared on the foredeck until the time the mate had his bearings taken when the ship still might have had head-



(Testimony of John H. Bowen.)

way and carried on beyond the end where it had rested on the bottom.

The Court: Is it or is it not possible that in those activities the position of the broken end that came aboard when it came aboard your vessel could have been a great distance from the place where that broken end was at the moment it was broken?

A. I don't think it could have been a great [313] distance, your Honor, no.

The Court: How many feet could it have been away from the place where it was at the moment it was broken?

A. I would say not more—in that depth of water not more than 150 feet.

The Court: How can you be assured that in shipping on board from the bottom of the Sound or Elliott Bay a cable of that size and weight, loose at both ends as it became when you cut the short end of the piece that had already been broken at that distance where you stated the break occurred, how can you be assured that the mere handling of that relatively small length of that heavy cable would not displace either end of it a considerable distance in feet or yards?

A. The cable as we started to pick up, sir, was about a half a mile, which would have been roughly five tons of cable. We exerted very little strain as we were picking it up very slowly, and at that moment we also gave the ship a little push ahead, as it were, with the engines, to exert as small a strain as possible on the cable. So the ship at that time

(Testimony of John H. Bowen.)

had way and it was following the course of the cable, the cable was coming in over the bow of the vessel and it would have taken only a very short time in that shallow water to bring the [314] end up from the bottom to the surface, so it would be my opinion that it would be relatively close to the position where the broken end was left.

The Court: State if you know before the cable was broken there was enough slack in it as it lay on the bottom to permit that cable to be moved sideways or in a direction away from its bed where it laid before it was disturbed. Is it possible that as it laid there before the break to have sufficient slack to permit a dragging anchor to pull it a matter of considerable distance in feet or yards away from its bed before the disturbance?

A. Yes, sir, there would have been sufficient slack to move it.

The Court: Have you anything to say about what would have been the maximum or minimum? What have you to comment, if any comment you feel it is proper for you to make——

A. I will say this—excuse me.

The Court: ——from the facts as you learned them, about the distance of the move that may have been effected upon the position of the cable before it broke by the dragging anchor or by a dragging anchor? Comment upon that, Captain, if you have sufficient information on the subject to do so. [315]

A. The cable could have been moved without

(Testimony of John H. Bowen.)

breaking it I would say as much as 600 feet, possibly more. It's been my experience——

The Court: Is that away from the bed?

A. From its initial position, yes, sir.

The Court: At the moment before a dragging instrument may have started a disturbance of its position?

A. Yes, sir.

The Court: You may continue.

Q. (By Mr. Morrow): On that same point, Captain Bowen, can you tell the Court in reference to the position as plotted for the broken end at the Seattle end and the 1953 position as established whether there is any indication, and if so what indication there is, that the cable was pulled out of line?

A. The position at which the Seattle end was picked up is south of the position the cable was replaced in 1953 a distance of approximately 75 yards.

Q. Could that cable have been disturbed in a southerly position in your opinion by a ship backing with his anchor out?

A. If the anchor were dragging on the bottom, yes.

Q. Now, Captain, what is the direct distance between the Seattle side at the sea wall at Pier 57 and the position of the broken end as marked on the chart? [316]

A. 1,100 yards.

Q. Pardon me?

A. 1,100 yards.

(Testimony of John H. Bowen.)

Q. 1,100 yards? A. Yes, sir.

Q. That would be 3,300 feet? A. Yes.

Q. And how does the 3,300 feet compare to the 3,450 feet of cable you picked up? 150 feet difference, is that correct? A. Yes.

Q. So with that information, Captain, it appears, does it not, that the cable, if it was disturbed at all from its 1953 position, was pulled southerly approximately 75 yards as a first conclusion, is that correct?

A. From that information it appears that——

Q. Yes. A. No.

Q. You have already testified——

A. You were talking about the length of the cable picked up as against the distance spanned.

Q. Pardon me?

A. I say you were speaking of the length of the cable picked up as against the distance spanned.

Q. Well, I'll withdraw the question. You have indicated [317] that there was a possible disturbance of the cable at the point establishing the break 75 yards, was it, southerly, is that correct?

A. I think so.

Q. Now, you have also indicated that the distance from the sea wall where the cable starts out and where you cut it off to the position of the break was 3,300 feet, is that correct? A. Yes.

The Court: Read that last question and answer.

(The reporter read the last question and answer.)

(Testimony of John H. Bowen.)

The Court: Where you cut it off to the break, what do you mean?

Mr. Morrow: The distance from the sea wall outward to the position of the break as established by the ship the captain says——

The Court: That is sufficient. Proceed.

Q. (By Mr. Morrow): Now, the difference between the amount of cable you picked up on that occasion and the actual distance is only 150 feet, is it not?      A. Yes.

Q. So that there is an unlikelihood that the ship Lenoir in picking up the cable pulled the cable in very much, isn't that correct? [318]

A. I would say that's correct.

Q. If at all. Now, Captain, you laid this cable originally in '49. Is it true that the cable is embedded in the mud?

A. I wouldn't say to any great distance, to great depth, no.

Q. Not to any great depth, but it is embedded in mud. That is a muddy bottom there, is it not?

A. As I recall we found growth on that cable which would indicate that it was resting on the surface.

Q. On the surface of what, the bottom?

A. Of the bottom, yes.

Q. Was the cable entrenched in any way to protect it against the fouling of an anchor?

A. No.

The Court: How could it be from the standpoint



(Testimony of John H. Bowen.)

of practical laying of submarine cables, how could it be entrenched?

A. I know of no way, your Honor.

The Court: Do you know of any submarine cable that is not just dropped on the bottom?

A. There are a few rare cases where a plow is used. On the Grand Banks the fishermen have trouble with it. It's a very expensive operation and it's not generally done. That's the only place in the world where I know it's done. [319]

The Court: How could you cover up the cable after you dig a trench to put it in?

A. It's a very fiendish device, sir, that bores a hole in the ground.

The Court: Then in turn the ground is placed on top of that?

A. I think so, your Honor. I've never seen it.

The Court: It is not very helpful in this case, but it is very interesting. You may proceed.

Q. (By Mr. Morrow): After the cable was laid in 1953 and shortly prior to the 1955 casualty, Captain Bowen, it would interfere, would it not, with the navigation of vessels insofar as dropping of their anchors was concerned off the face of the Canadian Pacific Dock and the Bell Street Terminal?

A. I don't know. It would depend on what depth they dropped their anchors to.

Q. Well, at two fathoms. A. Sir?

Q. At two fathoms. A. At two fathoms?

Q. Yes. A. Depth?



(Testimony of John H. Bowen.)

Q. Yes. Or 30 fathoms, pardon me. [320]

A. No.

Q. I misspoke myself. You say no?

A. I don't think so.

Q. Are you familiar with the 180 foot depth curve that runs along the face of the Canadian Pacific Dock and the Bell Street Terminal?

A. No.

Q. You're not familiar with it? A. No.

Q. I see.

Mr. Morrow: That's all.

### Cross Examination

Q. (By Mr. Mikkelborg): Captain Bowen, does the record which you have testified to I believe as Respondent's Exhibit A-5 entitled a deck cable report or your log show—that is the record of the cable laid after the 1953 repair and prior to March of 1955. Does that record show the cable within the boundaries of the cable area marked on the Coast and Geodetic Survey chart which has been marked here as Respondent's A-1? A. Yes.

Q. With respect to the broken end, that is the Seattle end which you picked up and have related the position of the [321] ship at the approximate time the end came aboard, what was the depth of water at that position?

A. The log indicates the depth of water at that position at 30 fathoms.

Q. Now, in your experience, Captain, in the repair of cables and the laying of cables does the

(Testimony of John H. Bowen.)

position in which the broken end was logged aboard have any direct and necessary relation to the position in which the cable was hooked or contacted by any dragging object?

A. I would say yes, it's the closest measurement to that position we could obtain.

Q. I didn't make my question clear, Captain. Is there any relationship between the position at which a broken end is found and the position in which the cable might have been first contacted by the device or the thing that caused it to break? If you don't understand my question——

A. I think I follow you, Mr. Mikkelborg. There is some relation. It could have been dragged a considerable distance before it broke and possibly hung onto the device that broke it and been dragged an additional distance after it was broken.

Q. Captain, in connection with this cable, what is the tensile strength, if you know, of this particular cable laid between Fort Lawton and Seattle?

A. It's approximately 25 tons. [322]

The Court: In other words, it would take a weight of 25 tons with all of its mass being suspended by the cable to break the cable, is that right?

A. Yes, sir.

Q. (By Mr. Mikkelborg): Is it correct to say it would withstand a pulling strain against it of up to approximately 25 tons before it would part? Is that correct?

A. Yes, that's correct.

Q. Now, Captain, you testified with respect to

(Testimony of John H. Bowen.)

a position in 36 fathoms of water at position 47 degrees 36 minutes 29 seconds north and longitude—north latitude that is, and north longitude 122 degrees 21 minutes 8 seconds west. Was that the position of the broken end, that is the Fort Lawton end of the cable, or was that the position in which you raised that segment of the cable somewhere along its length and not the position of the broken end?

A. It was the position at which we raised the bight of the cable somewhere along its length and not the position of the broken end.

Q. Now, Captain, you testified that the length of cable from the sea wall at Pier 57, that is its shore terminus, out to the broken end, that is the Seattle broken end, was some 3,450 feet, and you testified that the direct distance or the visual distance along the surface from [323] that same terminal point at Pier 57 out to the position in which the broken end, the Seattle end, was logged aboard was some 3,300 feet, is that correct? A. Yes.

Q. With a 150 foot difference? A. Yes.

Q. Are you familiar with the gradient of the bottom of the bay as it goes from Pier 57 at the sea wall out to that position in which you picked up the broken end?

A. It slopes off, it becomes deeper.

Q. It slopes off from approximately how deep at the sea wall to what depth at the position of the broken end?

A. The depth at the sea wall I think would be

(Testimony of John H. Bowen.)

about two to three fathoms. At the broken end my log indicates 30 fathoms.

Q. Now, at the time the broken end came aboard over the spool, I think you have described it, or the reel on the bow of the Lenoir, speaking of the broken end of the Seattle segment, did the ship have way on it?

A. Yes, it would have had way on it.

Q. In what direction was that way carrying the ship at the time the broken end came aboard?

A. Along the course that the cable was at that time on the bottom, in a northwesterly direction.

Q. In a northwesterly direction. Now, how far up from the [324] bottom did the end of that cable have to travel before it came aboard?

A. 30 fathoms, or 180 feet.

Q. And is it correct that the ship had way on it at this time?           A. Yes.

The Court: What is your final comment, then, or will you finally comment upon your estimate of the reasonable amount of distance that cable may have been moved by every force that was brought to bear upon it from the time it was fouled, if the Court should find on the evidence that it was fouled, by a dragging anchor until it got on board your vessel?

A. The distance from which it may have been disturbed from the time it was initially fouled by an anchor and then broken by that anchor could have been possibly 600 feet. The distance the ship might have moved it would have been in my judg-

(Testimony of John H. Bowen.)

ment about 150 feet. Those added together would make a total of 750 feet, your Honor.

Q. (By Mr. Mikkelborg): Captain, is it not true——

Mr. Morrow: Objected to as leading.

Mr. Mikkelborg: This is cross examination, Counsel.

Mr. Morrow: I'm going to object then on the [325] basis that this is not within the scope of the direct.

Mr. Mikkelborg: If the Court please, this is precisely within the scope of the direct.

The Court: The objection is overruled.

Mr. Morrow: I object to it as leading, your Honor.

The Court: That objection is overruled.

Q. (By Mr. Mikkelborg): During the time that the broken end had to travel from 30 fathoms down until it came over the bow of the Lenoir, you testified the Lenoir had some way on her in a north-westerly direction, is that true? A. Yes.

Q. Isn't it also true then, Captain, that the broken end of the cable, the Seattle end, would have been some distance, some perceptible distance to the southeast of the position logged for the time the cable end came aboard? In other words, south-east or further inshore?

A. That is possible. The ship would have been moving at the same rate the cable was picking up, therefore it would follow that the ship would move approximately the same distance on the surface as



(Testimony of John H. Bowen.)

the cable had to rise from the bottom, the ship's speed having been determined prior to that by dragging itself along with the cable.

Q. So is it your testimony then that at least the broken end would have been a distance of some 180 feet further [326] inshore from the southeast than the position at which you raised the end aboard, brought the end on deck?

A. I'd say that was possible, yes.

Q. Is that not probable, Captain, under all the circumstances?

A. It could be reduced a bit below that 180 feet because the ship at the same time would be losing way, and that was the reason for my giving the estimate of 150 feet for the possible distance that the ship may have moved the cable.

Q. How heavy is the Lenoir?

A. Her displacement would run with the load I think she had at that time something over 1,300 tons.

Q. She's 1,300 tons?            A. Yes.

Q. Captain, you in your experience have grappled and raised a good many cables, I believe you stated, and correct me if I'm wrong, during your experience you have participated in some 180 cable operations, is that correct?            A. Yes, sir.

Q. What type of instrument is a grapnel? Would you describe it?

A. It's roughly a hook designed for fishing for cables on the bottom.



(Testimony of John H. Bowen.)

Q. Does it have hooks or flukes something like an anchor. [327]      A. Yes.

Q. If such a grapnel or anchor were dragged somewhat lengthwise to a cable as the cable goes out into deeper water and the length of the grapnel remained the same, isn't it true that it would gradually take a greater strain on the cable as it progressed toward deeper water?

A. I assume that you mean by "the length of the grapnel" the depth of the grapnel on its suspending cable.

Q. Yes.

A. If that remained the same and the ship progressed along the course of the cable into deeper water, the strain would necessarily increase.

Q. And as the strain increased would it not progressively mark the cable more and more?

A. Yes.

Q. And if it were carried far enough in deep enough water with a given length of grapnel chain out would it not eventually break the cable?

A. Yes.

Q. In such a situation when it first hooked the cable, if it hooked it in shallow water would it necessarily make any marks on the cable?

A. It wouldn't necessarily make marks on the cable, no.

Q. But it would mark it as it progressed into deeper water with greater strain? [328]

A. As the strain increased, yes, either by progressing into deeper water or by its deviation from

(Testimony of John H. Bowen.)

the course of the cable, moving away from the line in which the cable was initially laid.

Mr. Mikkeltorg: No further questions.

Redirect Examination

Q. (By Mr. Morrow): Captain Bowen, who was it who established the position of the Seattle broken end of the cable?

A. The man who was at that time my second mate aboard the ship, Mr. Donald P. Kinney.

Q. Donald P. Kinney. Is Donald P. Kinney the navigating officer?

A. At that time he was, yes.

Q. Is he a competent man in establishing positions? A. Yes.

Q. In your opinion was this position of the broken end of the Seattle cable accurately established?

A. The position of the ship at the time the broken end was brought aboard I would say was accurately established, yes, sir.

Q. What Mr. Kinney was attempting to do then was to establish exactly the position where the break occurred, was he not? [329] A. No.

Q. Well, wasn't that what you did in fact?

A. We know that we cannot establish exactly the position of the broken end, sir, so we established the closest thing we can to it, and that would be the position of the ship at the time the broken end came aboard.

Q. Yes. If you had felt that the broken end

(Testimony of John H. Bowen.)

occurred any place else you would have established that position, wouldn't you?

A. No, we simply establish the position of the ship at the time the broken end comes aboard.

Q. Where is Mr. Kinney now?

A. He's on board the vessel, I think.

Q. Is he available as a witness?

A. I imagine he would be, yes.

Q. He is the one who actually established these positions, wasn't he?           A. Yes.

Q. Captain, are there other cables extending out from Pier 57 other than the Fort Lawton cable?

A. Yes.

Q. How many?

A. From the same area—from the area between Pier 57 and Pier 56 the Alaska Communication System has—had at that time two other cables.

Q. Extending out from Pier 57?

A. Actually three, one that had been abandoned some years before. There would have been three other cables extending out.

Q. If a ship had dragged an anchor over the marked cable area it would have picked up these other cables, would it not?

A. No, not necessarily.

Q. Well, not necessarily, but it might have?

A. It could have had it gone far enough south. This cable was the northernmost of those cables.

Q. Well, I understand this one extended outside the boundary of the marked cable area. Captain,

(Testimony of John H. Bowen.)

has the cable area been remarked since the 1955 casualty?      A. Yes.

Q. Where is the northerly boundary of the cable area now?      A. I don't know.

Q. The cable area has been remarked, has it not, Captain Bowen, to take in the Alaska Communication's Fort Lawton-Seattle cable?

A. I believe it's marked now to include the cable in its entirety from Fort Lawton to Seattle.

Mr. Morrow: Will you read that answer?

The Court: It will be read.

(The reporter read the last answer.) [331]

Q. (By Mr. Morrow): And has the cable area——

Mr. Mikkelborg: If the Court please, objection. We are now getting into what cables existed in 1958 and what areas are shown and plotted in 1958, which are far different from those existing in 1955 with which we are here concerned.

Mr. Morrow: Well, I'm dealing with the cable area and it will save calling another witness if I may ask this witness one or two questions on this subject.

The Court: As a part of your direct examination of this witness?

Mr. Morrow: Yes.

The Court: Be as brief as possible.

Mr. Morrow: Yes.

The Court: You may do it.

Q. (By Mr. Morrow): Captain Bowen, where is the northerly boundary of the cable area now in

(Testimony of John H. Bowen.)

reference to the piers on the waterfront? Where does it start? Does it start from Pier 59 now?

A. I don't know. I haven't familiarized myself with the existing position of that and wouldn't care to state.

Q. Well, can you refer to an up to date chart and just give us that information?

The Court: Let the bailiff assist you. Which exhibit do you wish? [332]

Mr. Morrow: Well, I would just rather have him refer to a chart rather than put another chart in evidence, your Honor.

Mr. Mikkelsen: I object, your Honor. We are objecting to conditions which exist currently and did not exist in 1955.

Mr. Morrow: This witness should be able to answer without reference to a chart.

The Court: That is what I think. I think that is true of nearly all these things.

Q. (By Mr. Morrow): Captain Bowen, you know where the marked area is now, don't you?

The Court: Remember, he is your own witness.

Mr. Morrow: Yes.

Mr. Mikkelsen: I remind the Court that this is direct and that this is the respondent's witness.

Mr. Morrow: Well, I think he has shown a little adversity here, your Honor.

The Court: The Court does not think so. You may proceed.

Q. (By Mr. Morrow): Captain, have you re-



(Testimony of John H. Bowen.)

cently marked or had marked under your supervision the Fort Lawton-Seattle cable?

A. Yes. As a matter of fact, I had the second, or the now first mate, Mr. Kinney, make a copy of the chart which [333] shows our cables so that the chart we have could be turned over as a court exhibit.

Q. You mentioned in your testimony that you knew that the cable area had been enlarged. Can you state where or not it has been enlarged in the vicinity of Piers 57 and 58?

A. I cannot. To be perfectly honest, Mr. Morrow, I've only seen that chart with the recent cable area marked, one glimpse I think either in your office or Mr. Mikkelborg's.

Mr. Morrow: Very well. That's all I have, your Honor.

Mr. Mikkelborg: One question, if the Court please.

#### Recross Examination

Q. (By Mr. Mikkelborg): Captain Bowen, in Counsel's interrogation the remark was made that the cable in 1955 was outside the boundary of the cable area. From your examination——

Mr. Morrow: The marked cable area.

Mr. Mikkelborg: Very well, the marked cable area.

Q. (By Mr. Mikkelborg): From your examination of the repairs can you state whether or not the cable as laid in 1953 and as plotted following the repair is outside [334] of, that is, is north or



(Testimony of John H. Bowen.)

south, of the cable area boundaries marked on the chart which is labeled Respondent's A-1? Is the cable inside or is it outside the north and south boundaries delimiting the cable area?

Mr. Morrow: I submit the exhibit speaks for itself, your Honor.

The Court: The objection is overruled.

A. The cable is inside the boundaries marked on the chart.

Mr. Mikkelsen: As of what time did you use the word "is"?

A. At the time it was put back in 1953 and so marked on this chart last night.

The Court: That has been said over and over again, I am sure. Anything else?

Mr. Mikkelsen: No further questions.

The Court: Step down.

(Witness excused.)

The Court: We will take a recess in this case until 2:00 o'clock this afternoon.

(Thereupon, at 12:00 o'clock noon a recess herein was taken until 2:00 o'clock p.m.) [335]

Thursday, August 21, 1958. 2:05 o'clock p.m.

(All parties present as before.)

The Court: Counsel, you may proceed.

Mr. Morrow: I will call Captain John Campbell, master of the Princess Louise.

The Court: Come forward. You have already been sworn, Captain. Will you resume the stand for further interrogation as a witness called for the respondent.

JOHN A. CAMPBELL

called as a witness in behalf of respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Morrow): Will you please state your name, Captain? A. John A. Campbell.

Q. What is your address?

A. 459 Bellville Street, Victoria, B. C.

Q. What is your occupation?

A. Master mariner.

Q. How long have you been a master mariner?

A. Since March the 4th, 1937.

Q. By whom are you employed? [336]

A. Canadian Pacific Railway Company.

Q. How long have you been employed by the Canadian Pacific Railway Company?

A. Thirty-five years.

Q. Were you master aboard the Princess Louise in March, 1955, particularly March 21, 1955?

A. Yes, sir.

Q. Would you please describe the Princess Louise as to her length, breadth and dimensions?

A. Well, her length is 420 feet, breadth about 48 feet, and tonnage, 4,000 tons, and she has quite a flaring bow.

Q. What type of vessel is the Princess Louise?

A. Single screw.

Q. In what service was the Princess Louise engaged in March, 1955?

(Testimony of John A. Campbell.)

A. Passenger and freight service on the B. C. coast runs in general.

Q. Is she a passenger ship? A. Yes, sir.

Q. What run was she on in 1955 in March?

A. She was running between Victoria, Seattle and Vancouver.

Q. In the passenger trade principally?

A. Yes, sir.

Q. What is the approximate dead weight tonnage of the Princess Louise? [337]

A. Approximately 4,000 tons.

Q. Would you describe her characteristics?

A. Well, she is a single screw with reciprocating engines.

Q. What are her characteristics in respect to her bow?

A. Well, she has what is described as a large flare on the bow.

Q. And how does that distinguish her from other vessels?

A. Well, a coasting vessel should be more or less straight sided.

Q. What effect does the characteristic of the flare of the bow have in connection with docking operations? A. It makes it more difficult.

Q. In what respect? Will you please describe that?

A. Well, unless you come in flat against the wharf, if the bow is at any angle it will come in contact with any buildings or passenger ramps or anything that are close to the face of the wharf.

(Testimony of John A. Campbell.)

Q. Are you familiar with the customary manner of docking the Princess Louise at the Canadian Pacific Railway dock in Seattle? A. Yes, sir.

Q. Would you describe how that is usually done?

A. Well, it's usually done by coming in as close to the pier on the opposite side of the dock as possible, preferably—— [338]

Q. Now, when you refer to the pier on the opposite side of the dock, what did you——

The Court: Did you wish to interrupt him? He had not——

Mr. Morrow: Yes, I wanted to interrupt him, your Honor.

The Court: You may proceed.

Q. (By Mr. Morrow): What pier do you refer to?

A. Well, I refer to Pier 63, which would be on your starboard side, when making a port landing at the Seattle dock.

Q. Yes. Now will you just continue with your description of the usual method of docking the Princess Louise at the Canadian Pacific dock?

A. Well, you come in ordinarily as close as possible to the wharf or the dock on the other side as I described, Pier 63, on port helm, the idea being that when you come astern the stern will go to port and the bow to starboard.

Q. Now, under normal weather conditions how does the Princess Louise back?

A. She backs to port.

(Testimony of John A. Campbell.)

Q. Have you had occasions to dock the Princess Louise in the face of a strong southeast wind?

A. Yes, sir.

Q. How frequently will that situation arise during the Winter time, Captain? [339]

A. Well, during the period that vessel is on the run it might occur anything up to half a dozen times.

Q. Now, what is the usual and customary manner in which the Princess Louise is docked in the face of a southeast wind during the winter time? Can you describe that?

A. Well, usually with the aid of the starboard anchor.

Q. Will you just continue and describe the maneuver under circumstances where in the winter time you dock in the face of a southeast wind?

A. Yes, sir. Well, coming down from Four Mile Rock to a position off the CPR wharf and turning on port helm and approaching at as slow a speed as possible and dropping the starboard anchor within about 900 feet off the face of Pier 63 which you are keeping close up to, the idea of that being that you can control the ship's speed better and you get the advantage of being able to use the engines and get the effect of the rudder.

Q. Now will you state, Captain, your reference to port helm, is that a left turn?

A. That is left, sir.

Q. Now will you please state whether or not during the winter time in the face of a southeast



(Testimony of John A. Campbell.)

wind you hold a little wider of your course than when the weather conditions are normal? [340]

A. That is correct.

Q. Captain, is it in your opinion feasible or practical to dock the Princess Louise by laying her port side along the face of the Canadian Pacific dock and putting a line on the dock and warping the vessel around the dock and into position?

A. In my position it is not feasible.

Q. And why not?

A. For the same reason I explained before, with the flaring bow and the buildings close to the corner of the wharf, it would be hard to do without inflicting damage to the wharf and the ship.

Q. Have you had any experience in docking the Princess Louise in that manner?

A. Not at Seattle, sir.

Q. Captain, getting now to the date March 21, 1955, can you state what time the Princess Louise docked at the Canadian Pacific dock? And I might say you may refer to your log which is in evidence as Respondent's Exhibit A-7. That is the pilothouse log.

(The exhibit was handed to the witness.)

A. The Princess Louise docked at Seattle March the 21st at 3:48 p.m.

Q. What were the weather conditions existing at and shortly prior to the time of docking? [341]

A. Southeast gale wind.

Q. And a southeast gale, how would you describe that in terms of miles per hour?



(Testimony of John A. Campbell.)

A. Well, on this particular day in question in miles per hour I would say forty miles per hour.

Q. Now, what was the state of the tide?

A. The tide was at 1441, which was approximately the time we were maneuvering there, 9.4 feet.

Q. Would that be a flood tide?

A. The tide was flooding, the last of the flood.

Q. Would the height of the water which you mentioned, 9.4 feet, be water in addition to that indicated on the navigation charts?

A. Yes, sir.

Q. Captain, during that period, March 21st or 22nd in 1955, did you have any information or knowledge of your starboard anchor fouling a submarine cable in the Seattle harbor?

A. No, sir.

Q. When did you first hear of any such claim?

A. To the best of my knowledge it was three weeks later.

Q. Captain, what was your scheduled arrival at the Canadian Pacific dock on March 21, 1955?

A. 2:45 p.m.

Q. Would you describe what occurred during your approach [342] to the dock until the time of docking, please? Just briefly.

A. Well, on my first approach I found that when I was getting close to my position to enter between the two docks, the CPR dock and No. 63, that the ship was a little out of position to what I wanted. In other words, her stern was too close

(Testimony of John A. Campbell.)

to Pier 63, and at the last moment I decided it was better to back out and try again.

Q. Now, prior to backing out did you follow the usual procedure in respect to dropping the anchor?

A. Yes, sir.

Q. Under that type of weather conditions?

A. Yes.

Q. And what was that? What was done?

A. Well, on the way in from Four Mile Rock to position from the CPR wharf I instructed Mr. Hodge, first officer, to go down and have the anchor handy. In fact I instructed him to heave it out to fifteen fathoms under water and to stand by on the forecastle head and I would signal him when to drop it an additional fifteen fathoms, making the total in the water thirty fathoms.

Q. And was the anchor dropped to 30 fathoms?

A. Yes, sir.

Q. Now, where would that 30 fathoms begin? Would that begin, for example, at the bow of the ship or at the water level?

A. That was at the water level.

Q. So that there would be 30 fathoms of——

A. Chain.

Q. ——cable to the anchor, is that correct?

A. Yes.

Q. Now, what was the position of the Princess Louise on this occasion in reference to any dock along shore when you dropped the anchor?

A. She was about 900 feet from the southwest corner of Pier 63.

(Testimony of John A. Campbell.)

Q. How did that compare, Captain, to previous occasions on which you had made or attempted a landing in the face of a southeast gale?

A. Very similar.

Q. Now, Captain, directing your attention now to where you left off in your testimony, you stated that you backed the vessel down. Will you take up the narrative of your story there and state what occurred from then on?

A. Well, when I discovered that I had to back out I put her full astern, and first of all she backed in the direction she should with the action of her propeller, which is to the left. Or port, excuse me.

Q. Now let me interrupt just a minute, please, Captain. You had previously indicated that under normal conditions, [344] normal weather conditions, if I recall correctly, that the Princess Louise backs to the right. Now, what is her action——

A. No, she backs to the left, sir.

Q. She normally backs to the left?

A. Yes. Didn't I say left?

Q. Well, you probably did. Now, what is her backing action under conditions where you have a southeast wind?

A. In the first instance she will follow her natural inclination to go to the left, but in a short period of time she will back to the right, the wind influence blowing the bow down and the stern going up into the wind.

Q. I see. Captain, during this backing maneuver

(Testimony of John A. Campbell.)

was there any leeward action of the vessel in the face of the southeast gale then existing?

A. Oh, yes, there was a considerable amount. It's hard to judge, but it would be a considerable amount.

Q. Now, when I use the term "leeward," what direction would that be generally on the chart?

A. Northwesterly.

Q. Northwesterly. All right. Now, how far approximately did the vessel back on this occasion?

A. Well, as I recollect, down as far as the Bell Street wharf, and that is the next pier down. [345]

Q. Do you mean the next pier northerly?

A. In a northwesterly direction.

Q. I see.

A. And then when I got out clear, what I figured turning room to come ahead on port helm, I put the engines ahead and steamed around on left rudder to get back to my position to attempt another landing.

Q. Now, when you say you steamed around on the left rudder, do you mean a left circling motion?      A. Yes, sir.

Q. I see.

The Court: That was by having your rudder to port, your rudder pointing in the direction of the port side?

A. Yes, sir.

The Court: And that brought the bow of the ship around in a curve to the same side?

A. That's right, yes.

(Testimony of John A. Campbell.)

The Court: You may proceed.

Q. (By Mr. Morrow): All right, Captain, will you just continue the story of the maneuver of the Princess Louise after you started this port turn?

A. Well, as I recollect the tug Titan came along and offered assistance, and I accepted.

Q. Yes. Where was the Princess Louise when the Titan came alongside? [346]

A. Well, we were, as near as I can recollect, turned around and heading back in a southwesterly direction.

Q. Now, in what manner did the tug Titan render assistance to the Princess Louise on this occasion?

A. Well, he was secured to the stern, or starboard quarter of the Princess Louise, with his own towline.

Q. Was there any officer of the ship who had duties in connection with the tug?

A. Yes, the first officer, Mr. Hodge, who had been forward in the first attempt to land, was back looking after the making fast of the tug.

Q. Was First Officer Hodge stationed at the stern of the Princess Louise during the time that the tug Titan was rendering assistance?

A. Yes, sir.

Q. Now, what maneuver did the Princess Louise then make with the assistance of the tug Titan?

A. Well, we maneuvered back up the harbor into the same position as we had been before.

Q. Now, when you say—pardon me.



(Testimony of John A. Campbell.)

A. I made a point of coming in with a line between the CPR dock and this same Pier 63 that I mentioned before, and with that——

Q. Now,—— [347]

The Court: The witness still is not quite finished, Mr. Morrow.

Mr. Morrow: Yes. I would like to interrupt, if I may.

The Court: You may do that.

Q. (By Mr. Morrow): Captain, how did your course in approaching Pier 64 on the second approach compare to your course on the first approach?

A. Well, there was very little difference. That is the position I try to get in to make the landing under those conditions.

Q. Now, what effect did the Titan have upon the Princess Louise during the second attempted docking operation?

A. Well, he counteracted the effect of the wind on the stern.

Q. During this maneuver from the time you first dropped your starboard anchor what was the situation in respect to that starboard anchor?

A. It was still in the position that we had put it when we made the landing, 30 fathoms in the water.

Q. Did you have any purpose in leaving the anchor out at 30 fathoms?

A. Yes, sir. I didn't see any point in heaving it in, as according to the depth of the water shown



(Testimony of John A. Campbell.)

on the chart and the position that I was approaching from. [348]

Q. What would be the advantage of leaving your anchor at 30 fathoms, Captain?

A. Well, it would take bottom at the nearest point when the water was 180 feet deep.

Q. Did you consider that a proper precaution to take at that time? A. Yes, I did.

Q. Now, what other action or maneuvers were taken, Captain, in connection with the second approach?

A. Well, at the second approach, as I mentioned, Mr. Hodge was back aft, and there's a telephone connection between the stern and the bridge, and he was directing the operations, the speed, whether to increase the speed of the towboat or reduce it, in accordance with my maneuvers, and Mr. Ward, second officer, who had come up to the wheelhouse during this maneuvering, I sent him forward to look after the operation of the anchor.

Q. Was there anybody stationed at the anchor windlass up forward? A. Yes, sir.

Q. And what was his name?

A. His name was John Guiney.

Q. Captain, was any further action taken on either the starboard or the port anchor before you docked?

A. No further action was taken with the starboard anchor, [349] but I had instructed Mr. Ward before he went down that I would signal him as we approached the wharf if I wanted the port an-

(Testimony of John A. Campbell.)

chor let go. As the ship approached the wharf I signaled him to let go the port anchor.

Q. And how far was the ship from the wharf when the port anchor was dropped?

A. Right between the two wharves, at the extreme seaward end.

Q. Now, Captain, how long did the Princess Louise remain at the Canadian Pacific dock before departure?

A. Twenty-one minutes.

Q. And what time was the departure?

A. 5:09—no, pardon me, correction on that.

Q. You may refer to your log.

A. An hour and 21 minutes.

Q. An hour and 20 minutes later. Now, on departure, Captain, what maneuvers did the vessel make?

A. When the vessel was alongside I hove up the port anchor and on leaving as we backed out we hove up the starboard anchor.

Q. Will you state whether that procedure is customary and usual?

A. Yes, it's quite common.

Q. Captain, when you made the first approach to the Canadian Pacific dock can you state within what distance the [350] Princess Louise was of the outer end of Piers 57 and 58? In other words, the closest distance that you got to those piers on the first approach.

A. Well, I would say approximately four and a half cables.

Q. What is a cable, Captain?

(Testimony of John A. Campbell.)

A. A cable is a tenth of a mile, two thousand yards.

Q. What was the closest distance that you came to the piers, that's the outer end of Piers 57 and 58, on the second approach?

A. Well, I came in as near as possible to the same position, making the same kind of a turn.

Q. Captain, I would like now to refer you to Respondent's Exhibit A-1, which is a navigation chart which has been identified as corrected to March 21, 1955.

(The exhibit was handed to the witness.)

Q. On the chart appear some red lines in the vicinity of Pier 64 and the Bell Street terminal which have been identified as the Fort Lawton-Seattle cable then existing on March 21, 1955. Can you tell us, please, what the distance of the said cable is off the face of the Canadian Pacific dock?

A. Do you mean the outer end of the cable area?

Q. Not the cable area. Do you find the red lines?      A. Not the cable area lines?

Q. No, not the cable area lines. There's a red line with—there are four little tiny circles. [351]

A. Oh, yes, I see what you mean.

Q. Now, that part which you identify now has been previously identified as the place of the Fort Lawton-Seattle cable, and repeating my question, what is the distance between that cable and the face of the Canadian Pacific dock?

A. The nearest point?

Q. Yes.      A. 890 yards.

(Testimony of John A. Campbell.)

The Court: Between what two points, please? Repeat.

A. That is the nearest point of the red line marked as the Fort Lawton cable and the southeasterly corner of the CPR wharf, sir.

Q. (By Mr. Morrow): Now would you check that? Is that in terms of yards or feet? Would you check your——

A. That is in term of yards—oh, no, wait a minute.

The Court: 800 yards?

A. No, I'm talking about feet. Pardon me. I transposed it into feet. 890 feet.

The Court: 890 yards, or do you mean feet?

A. I mean yards.

The Court: Captain, it is a common thing for one like me to do that exact thing, so do not be embarrassed about it. Just correct it if you discover [352] it in time. 800 yards was the closest——

A. 890, sir.

The Court: 890 yards was the closest point on established cable line?

A. That's correct.

The Court: From the CPR——

A. The southeast corner of the CPR dock.

The Court: Which corner?

A. The southeast.

The Court: From southeast corner of the CPR dock?

A. Yes, sir.

The Court: Is that what he said?

(Testimony of John A. Campbell.)

Mr. Morrow: Your Honor, I'm afraid that the witness and I are not talking about the same thing. I'm afraid he has——

The Court: I would like to have this information.

Mr. Morrow: I would, too.

The Court: If the witness feels that his statement is still correct, then you can repeat your question to the witness.

Mr. Morrow: Well, I can't see where he is measuring from.

The Court: Will you state again from what [353] point you are measuring, Captain?

A. I'm measuring from the southeast outer end of the CPR wharf, sir.

The Court: Will you take that map with you and the calipers and dividers down to Counsel table and within the view of both Counsel point out what you there are doing, Captain?

A. Yes, sir.

The Court: In that space there between the two Counsel.

(Witness goes to Counsel table with Respondent's Exhibit A-1.)

Mr. Morrow: The witness has discovered a slight correction. I think he can correct it on the stand.

The Court: He may make the correction from the witness stand.

(Witness returns to stand with exhibit.)

The Court: You were discussing the distance be-

(Testimony of John A. Campbell.)

tween the closest point on the established cable line from the southeast corner of the CPR dock.

Mr. Morrow: Yes.

Q. (By Mr. Morrow): Now, Captain, you have indicated you misspoke yourself. Will you please now state the measured distance from Pier 64 to the cable? [354]

A. I make that distance 290 yards.

Q. 290 yards? A. Yes.

The Court: The distance in question now on the 290 yard statement is the same distance that you spoke of the last time you mentioned this?

A. Yes, your Honor.

The Court: You may proceed.

Q. (By Mr. Morrow): Captain, what is the distance from the face of the Bell Street Terminal—do you know what I refer to when I say “the Bell Street Terminal”? A. Yes, sir.

Q. How is that indicated on the chart? Is there any designation there that—it says, “Port sign N. limit. Tank. Port sign N. limit”?

A. That’s right.

Q. What is the distance from there, from the face of the dock to the marked Fort Lawton cable?

The Court: The same cable but a different starting point, is that right?

Mr. Morrow: That’s right, your Honor.

The Court: And the starting point is what in your question?

Mr. Morrow: From the Bell Street Terminal.

The Court: Bell Street. [355]



(Testimony of John A. Campbell.)

A. Now, that's a fairly long wharf, sir. Do you want the nearest point, or——

Q. (By Mr. Morrow): Well, from the southerly point. A. The southerly point.

The Court: Do all agree what the number of that dock is, 67? Is Bell Street No. 67?

A. 66, sir.

The Court: The witness says 66, but I am sure someone has referred to it as——

Mr. Morrow: If I may refer to Respondent's Exhibit A-9——

The Court: Does it give the number?

Mr. Morrow: Yes, your Honor.

The Court: What is Bell Street's number?

Mr. Morrow: I'll have it in just one moment. A-9 is this chart right here, a map of the Seattle harbor.

The Court: Let Counsel have it.

(The exhibit was handed to Mr. Morrow.)

Mr. Morrow: That is 66, your Honor, and on this Port of Seattle Harbor map it is also designated as Bell Street, abbreviated "St."

The Court: You may proceed.

Q. (By Mr. Morrow): Captain Campbell, have you computed that distance? [356]

A. Yes, sir. I make it 370 yards.

Q. Very well. Now, Captain, had you any knowledge or information that the Seattle-Fort Lawton cable or any other cable lay off the Canadian Pacific and the Bell Street terminals as indicated by the red line on Respondent's Exhibit A-1?

(Testimony of John A. Campbell.)

A. No, sir.

Q. When was the first time that you had any knowledge that the cable extended in this position off the dock?

A. When I looked at this chart.

Mr. Morrow: You may inquire.

The Court: When did you look at the chart, with reference to Respondent's Exhibit A-1?

A. Sir, this is the first time I've seen it.

The Court: You may proceed.

### Cross Examination

Q. (By Mr. Mikkeltorg): Captain Campbell, referring to those measurements you have just made, how deep is the water at the point which you placed your dividers to locate the distance you stepped off from both the Bell Street Terminal and the CPR dock, the offshore terminus of the same distance?

A. The offshore terminus of the same distance?

Q. The same two distances. [357]

A. You mean in line with the pier?

Q. As I understand your testimony, you have measured the distance from——

A. The southeast corner to the nearest approach of the cable.

Q. Yes, and I wish to know the depth of water——  
A. At that point?

Q. At the point where you touched the cable with your dividers to indicate the total distance.

(Testimony of John A. Campbell.)

A. From the CPR dock to the cable the nearest depth recorded is 197 feet.

Q. Is that the depth at the position your dividers touched the cable?

A. That's the nearest depth, sir, and it's only a matter of a few yards.

Q. Very well, and the other terminus of the other distance at the cable, what depth is shown there?

A. The nearest depth recorded, which is to the shoreward side of the cable, is 160 feet.

Q. How far from the cable is that nearest sounding?

A. Approximately 90 yards.

Q. What is the nearest sounding to seaward of the cable at that point?

A. On the seaward side of the cable?

Q. Yes, at that point. I'm not interested in the distance, [358] Captain, right away. I just want to know what the sounding is.

A. Oh, I'm sorry, I thought you wanted the distance. From that point, 239 feet.

Q. So is it correct then——

A. On one side, and it's practically the same on the other, 197.

Q. Am I correct in——

The Court: Is that still depth you are talking about?

A. Yes, sir.

Q. (By Mr. Mikkelborg): Is it correct then that the cable at that point to which you measured lies

(Testimony of John A. Campbell.)

between a sounding of 160 feet on the inshore side and 200 and what did you say on the offshore side?

A. 239.

Q. 239 feet. Very well.

The Court: What was that greatest depth? How many feet was that greatest depth?

A. 239, your Honor.

The Court: 239. How far in horizontal distance is that 239 measurement or depth from the dock?

A. From the dock, sir, from the CPR dock?

The Court: Yes.

A. About 610 yards. [359]

The Court: The latter depth, 239, is that the one?

A. That's the one.

The Court: Six hundred and how many yards?

A. 610 yards.

The Court: What general direction, southwesterly or what?

A. Southwesterly, yes, sir.

The Court: You may inquire.

Q. (By Mr. Mikkelborg): Captain, I may have misheard your response to Counsel regarding the description of your ship, the Princess Louise, but I thought you said 420 feet. Did you mean to say 420 feet? A. 320 feet, sir.

Q. I thought so. With regard to the configuration of her bow, the flare of that bow, how high above the dock, the stringer on Pier 65, is that bow at high tide such as you testified you had that day?

A. Approximately eighteen, twenty feet.

(Testimony of John A. Campbell.)

Q. Above the dock, is that correct?

A. At high water.

Q. Captain, how long had you been on this run before March 21, 1955?

A. On this particular ship about five weeks, as I remember it. [360]

Q. In response to a question by Counsel on direct you said in making your approach on this day because of the gale you went wide of your course. I believe those were the words you used.

A. That is correct.

Q. By that do you mean you rounded further to the south in making your turn?

A. Slightly.

Q. You testified as to the height of the tide at that time, at the time you were docking.

A. Yes.

Q. Where did you get that figure?

A. From the tide book.

Q. And is that a predicted figure or is that an actual figure? A. It's predicted.

Q. Captain, how heavy was your anchor, if you know, on the Princess Louise?

A. I couldn't say for sure, but I'd say approximately 2,500 pounds.

Q. About a ton and a half?

A. Ton and a quarter.

Q. Ton and a quarter. You testified as to having two shots of chain. Do you know how heavy one shot of chain is on the size chain you used at that time? [361]

(Testimony of John A. Campbell.)

A. No, I'm afraid I don't.

Q. Have you any idea? Do you know what size chain it is?

A. Yes, about an inch and a half.

The Court: That is the diameter of the metal in forming a link of the chain?

A. I'm referring to the diameter.

The Court: That is what I meant. That is not a very heavy or large, strong chain, is it?

Q. (By Mr. Mikkelborg): Is it correct, Captain, that each link is forged from steel bars of—what diameter did you say?

A. About an inch and a half. It might be a little more, but not much.

The Court: Is that regarded as being strong enough to hold the anchor of a ship the size of the Princess Louise?

A. Yes, sir, I'd say so. They were tested and put aboard the ship with that in view.

The Court: You may proceed.

Q. (By Mr. Mikkelborg): As I understand your testimony, Captain, you were scheduled to arrive at the CPR dock, Pier 64, on the date of March 21st at 2:45, is that correct?

A. That is correct, sir.

Q. And you stated you made your arrival at 3:50, or 3:48 I believe you said. [362]

A. 3:48 I think it was.

The Court: You arrived where at that time?

A. At the Seattle wharf, sir. 3:48 it has in the log book. Now I'd like to mention at this time



(Testimony of John A. Campbell.)

that there was considerable delay entailed after the vessel came alongside before this time was put down.

Q. (By Mr. Mikkelborg): What time did you ring off your engines?

A. This refers to the time we finished with engines, 3:48.

Q. Are you quite certain of that?

A. Yes, sir.

Q. Was it your custom on the Princess Louise to keep what mariners refer to as a bridge bell book? A. We never kept one.

Q. Now, Captain Campbell, you testified that the reason you elected to back out and try another landing was that your stern had drifted down too close to I believe you said Pier 63?

A. No, Pier 64 was the dock I was going to land at.

Q. Thank you. I wasn't sure. Pier 64 was the dock where you intended to moor?

A. That's right.

Q. And I believe it was your testimony that the wind blew the stern downwind. [363]

A. That is correct.

Q. What means did you have to hold the bow up into the wind?

A. By that time the anchor had taken ahold and was steadying the bow.

Q. The ship's propeller and rudder are at the stern, are they not? A. That is correct.

(Testimony of John A. Campbell.)

Q. Is it true that you were unable to hold the stern upwind with the use of propeller and rudder?

A. At that particular time in the position I was in I couldn't afford to go ahead, and that's the only way I could have gotten any action.

Q. Now, Captain, with respect to the anchor again, you testified you dropped—no, you testified you heaved out fifteen——

A. Fifteen fathoms.

Q. And dropped an additional fifteen?

A. Yes, sir.

Q. With the dropping of the additional fifteen fathoms, what do you mean by that as distinguished from your first fifteen that you heaved out? What is the difference between heaving out fifteen and dropping fifteen?

A. Well, when you heave it out you lower it with the windlass in gear. [364]

Q. Over the wildeat, is that not right?

A. That's right.

The Court: Over the what?

A. The wildeat. It's shaped to fit the links.

Q. (By Mr. Mikkeltorg): So it is very easily controlled, is it not, then, Captain?

A. That is right.

Q. Now, when you dropped the second fifteen fathoms, this is additional weight, is it not?

A. That's right.

Q. And how was that controlled?

A. That was controlled by the brake.

(Testimony of John A. Campbell.)

Q. And is it not true that that is a friction brake? A. That is right.

Q. How did you know that fifteen fathoms was dropped, that particular amount, how did you know that it was not more or less?

A. Well, it's open to doubt, no doubt, but the fact remains that when you heave out fifteen to start with the anchor doesn't gain so much momentum and the position I dropped the last fifteen was close in to our wharf where the depth was getting less all the time, and therefore we had easier control.

Q. Were you able to see any marks on the chain? [365]

A. Not from my position.

Q. Were there any marks on the chain?

A. In what—what manner of marks do you mean?

Q. Well, how does one tell when one has fifteen fathoms out or fifty fathoms out?

A. Well, each fifteen fathoms is marked with a shackle and the previous links are painted white, so that when they come up the hawse pipe you have a warning.

Q. Were you able to see those marks?

A. I was not in a position to see them.

Q. Isn't it true, Captain, that the flaring bows you have referred to make it difficult to see anywhere down near the forefoot of the vessel?

A. Well, if you were up on the bow it might be difficult.

(Testimony of John A. Campbell.)

Q. I'm speaking of from the bridge.

A. Oh, from the bridge it's impossible no matter what the bow is.

Q. When you say you dropped the second fifteen fathoms fairly close in, did you make a record of that position?      A. No, only by eye.

Q. Did you make a record of the position when you first dropped any of the anchor chain at all?

A. I know where it was, when we first put the engines on slow off of the Bell Street Terminal.

Q. Were there any visual bearings taken to fix the ship's position at that time? [366]

A. Only by myself by eye, in line with the wharves.

Q. Did you record such bearings at that time?

A. No, sir.

Q. Were there any visual observations taken to fix the position of the ship during your approach?

A. Yes, I watched Pier 63 and Pier 64.

Q. Were any of those observed positions recorded or plotted?

A. No. That was never customary to be done.

Q. Do you have any record whatever of the position the ship was in during this approach?

A. Nothing in writing.

Q. Is it all based on your memory?

A. Yes, and what we do in common practice.

Q. How long ago was that, Captain?

A. Well, it was about three and a half years.

Q. With respect to use of the tug, Captain

(Testimony of John A. Campbell.)

Campbell, why did you elect to use the tug on your second approach?

A. Well, I considered he would be of assistance.

Q. Did you state that your position as you began your second approach with the use of the tug was substantially the same as the position you were in at the beginning of your first approach?

A. Not when I first hooked the tug on, but when I turned in towards the wharf, yes. [367]

Q. Why did you let go your port anchor, Captain? A. For additional safety.

Q. Was there a question in your mind concerning the control of the ship?

A. There was room to doubt that the starboard anchor would be effective enough to hold her off the CPR wharf, so I dropped the port anchor to support it.

Q. Had you at any time paid out any additional chain on the starboard anchor to assist in holding?

A. No, sir.

Q. Captain, you testified regarding your position off Pier 57. Did you make any observations and record any observations of that position at the time? A. No, sir.

Q. Captain, we seemed to have had some difficulty with distances. You were asked how far off Pier 57 you were and you said four and a half cables. You were asked——

A. That's approximate.

Q. Yes. And you were asked how long is a

(Testimony of John A. Campbell.)

cable, and I may have misunderstood you but I thought you said two thousand yards.

A. It's a tenth of a mile.

Q. Is two thousand yards?

A. No, two hundred yards.

Q. Beg your pardon? [368]

A. Two hundred yards.

Q. Two hundred yards. If you said two thousand yards you didn't intend that, did you?

A. No, I didn't, and I believe I did when I come to think of it.

Q. You believe you did say two thousand yards?

A. I believe you're right.

The Court: You said two thousand feet, I thought.

Mr. Morrow: Yes, he said he was two thousand feet off.

The Court: Now you wish to change that to two hundred feet, or what is it, two hundred yards? What is it?

A. The length of a cable, sir, is the question, I believe.

The Court: We are thinking about different things, I imagine.

Q. (By Mr. Mikkelborg): You were asked on direct examination, Captain, how far off Pier 57 you were during this maneuver and you said about four and a half cables?

A. Yes, that's right.

Q. And then you were asked how long is a



(Testimony of John A. Campbell.)

cable and it was my impression you said two thousand yards.

A. I could have said that. [369]

Q. You did not intend to say that?

A. No, I didn't.

The Court: What did you mean, two thousand feet or two hundred yards?

A. Two hundred yards.

The Court: Two hundred yards. I am not sure that we are thinking about the same thing.

Mr. Morrow: No, your Honor. There are two things involved here. One is how long is a cable. The witness testified four and a half cables. I don't recall that he testified as to the length of a cable on his direct examination.

Mr. Mikkeltorg: I believe the record will show he was asked precisely that, "How long is a cable," and he said, "Two thousand yards."

Mr. Morrow: I don't think he said any such thing.

The Court: You may proceed.

Q. (By Mr. Mikkeltorg): What is your testimony now, Captain, as to the length of a cable, you being four and a half cables as far as you can recall off Pier 57?

Mr. Morrow: Now I object to that question, it's double-barreled. "How long is a cable" is one question.

The Court: That objection is sustained. [370]  
Just ask the specific question you wish to ask.

Mr. Mikkeltorg: Yes, if it please the Court.

(Testimony of John A. Campbell.)

Q. (By Mr. Mikkelborg): You testified you were four and a half cables off Pier 57?

A. Yes, sir, approximately.

Q. Would you now state what your testimony is as to the length of a cable?

A. Two hundred yards.

Q. Two hundred yards?           A. Yes.

Q. With respect to that position, Captain, were any observations taken and recorded?

A. No, sir.

Q. How did you establish that you were four and a half times two hundred yards off Pier 57?

A. Well, by my usual position and where I turn with relation to Pier 64 and Pier 63.

Q. How did you determine that?

A. By the angle of the two wharves by eye.

Q. By eye. Is that what is sometimes referred to as seaman's eye?

A. Well, I suppose you could call it that.

Q. And is it not true, Captain, that that was your estimate as you now recall it?

A. Well, it's not an unusual occurrence. It's a [371] position that we take during the weather that was in force that day.

Q. I believe it was your testimony that you had experienced weather of that nature, I think you said a half dozen times.

A. It could be a half dozen times. I didn't say that I was there all the time.

Q. I see. Do I understand correctly that it could have been a half dozen times during the period in

(Testimony of John A. Campbell.)

which you have been running into Seattle with one of the Princess boats?

A. Oh, no, much oftener than that.

Q. I see. A half a dozen times during the five weeks——

A. The Princess Louise was only a relief ship on the run for approximately six weeks.

Q. I believe you testified that you had commanded her for some five weeks before this occasion, is that correct?      A. That's right.

Q. Is there any record at all, either on your charts or in your log books, and would you have made any record of the position in which you now say you were in off Pier 57 on March 21, 1955?

A. No, sir, there is no record that I know of, and it wasn't customary.

Q. It's all based on your recollection at this time? [372]      A. That's right.

Mr. Morrow: Well, I wish to state to Counsel that there is this chart which I offered in evidence or offered to be marked as an exhibit which is in existence.

Mr. Mikkelborg: The objection to that, if the Court please, still stands, in that the markings on that exhibit were not prepared on March 21, 1955 or anywhere near that time, they were prepared during the last two or three days.

Mr. Morrow: I was just making a statement for Counsel.

The Court: That covers it. As usual, neither Counsel's statement can help the other. Proceed.

(Testimony of John A. Campbell.)

Q. (By Mr. Mikkelborg): Now, Captain, were you pretty busy on the bridge of the Princess Louise during this docking, or did you have ample time?

A. Well, I was as busy as one would ordinarily be under the circumstances. You're watching what's going on, you're setting drift, and——

Q. Who issues orders to the engine room telegraph, Captain? Do you or does someone else?

A. I do.

Q. What was your answer with regard to whether or not you were busy? [373]

A. Well, if you can call that busy. It's just a question of watching the position of the ship.

Q. You were concerned with the safety of the passengers and your schedule and many things, were you not?

A. Well, I wouldn't say that. The ship is quite seaworthy and there was no occasion to worry about anything happening. The only—my main concern was getting alongside without doing any damage to the wharf or the ship and keeping clear of the cable area.

Q. You were concerned with keeping clear of the cable area?

A. Well, I certainly knew it was there. It's marked on the chart.

Q. Had you ever noticed the signs?

A. Yes.

Q. What do those signs say?

A. It says, "Cable area, keep clear."

(Testimony of John A. Campbell.)

Q. Does it say anything about——

A. "Do not anchor."

Q. It says, "Do not anchor"? A. Yes.

Q. So is it true, Captain, that the reason there were no records made of your position at the time was that you were rather concerned and busy handling the ship? Is that not so?

A. It is the usual practice that we never keep any records [374] unless there is something, some incident occurs, and in this case I had no reason to think anything was out of the ordinary.

Q. Would you recall, Captain, thinking back to that docking, whether there was a usual number of engine orders rung on the telegraph issued by you or an unusual number under those circumstances?

A. Well, under those circumstances there's always more than under normal circumstances, because that is how you keep the ship in position where you want it, slow ahead or slow astern or dead slow, there's all kinds of different movements involved, just according to the set of the ship.

Q. Would you say you were in trouble at any particular time during this maneuver?

A. No, I would not.

Q. Would the fact that from the time you rang down "Stand by," "Stand by" to the engines beginning your approach until the time you rang down "Finished with engines," would the fact that there were some forty-four bells give you any indication of whether it was a troublesome docking or a routine docking?



(Testimony of John A. Campbell.)

A. Well, I would say it was troublesome, but it doesn't necessarily follow that the vessel was in trouble.

Q. Do you recall, Captain, any periods in there when you [375] might have given as many as four engine orders within the same minute?

A. Yes, that's possible.

Q. But that doesn't indicate that you were in any trouble?

A. Not necessarily. All I was trying to do was get down on that wharf at a certain bearing.

Q. Would the fact that you rang up "Slow astern" at 1531 and "Full astern" at 1531, that is 3:31 in terms of standard time, and "Stop" at 3:31 and "Slow ahead" at 3:31 indicate that you were in any difficulty in your mind?

A. No, it indicates that I might have changed my mind at a certain point there.

Q. Does it indicate there was some problem in controlling the ship?

A. It indicates that that was when I had to either get in between the piers or back out, I would assume, but those movements.

Q. Would that also be your conclusion as to a stop bell at 1532 and a dead slow ahead bell at 1532 and a slow ahead bell at 1532 and a stop bell at 1532?

A. Well, I couldn't say offhand now what it would mean.

Q. Is it your testimony that your usual ap-



(Testimony of John A. Campbell.)

proach in that kind of weather was to go upwind and come down toward Pier 64? [376]

A. That's right.

Q. Usually without the aid of a tug, is that correct? A. Yes.

Q. Are you required to account to the owners when you use a tug under those circumstances?

A. No, I'm free to use a tug at my own discretion.

Q. But you decided you didn't need a tug on this day?

A. I didn't think it was necessary, but after the first approach I considered that he would be very useful.

Q. Captain, are you familiar with the ground tackle on the Princess Louise, that is the anchor arrangements?

A. Well, I'm fairly familiar with it.

Q. Is there any bending shot or connecting shot between the fifteen fathoms immediately above the anchor and the anchor shank itself?

A. Just what do you mean?

Q. Well, when you refer to the first fifteen fathom shot—— A. Yes.

Q. Is there any additional chain between the lower end of that shot and the anchor itself?

A. It's just a special shackle.

Q. Just a special shackle. How long is the shank of the anchor itself, Captain?

A. Approximately six feet.

Q. Six feet? [377]

(Testimony of John A. Campbell.)

A. Eight feet, I'll say.

Q. Eight feet?           A. Yes, sir.

Q. It's a ton and a quarter anchor with a shank eight feet long?

A. Approximately eight feet.

Q. It might be longer than eight feet, might it not?           A. No, not much.

Q. When that anchor is on the bottom, Captain, whether it's level on the bottom or not particularly level on the bottom, is there any visible effect on the chain where the ship also has some headway or some sternway?

A. Yes, the chain would lead aft if the ship had headway and it would lead ahead if the ship had sternway.

Q. That would also be the case, would it not, Captain, if the anchor were on the bottom?

A. That is quite correct.

The Court: At this time we will take a ten minute recess.

(Short recess.)

The Court: You may proceed.

Q. (By Mr. Mikkeltorg): Captain, with respect to the tug Titan, did you or someone in your shore organization send the tug out or did you order it sent out?

A. No, to the best of my knowledge, no. [378]

Q. The tug just appeared there?

A. The tug I believe was sent out by the manager of the towboat company.

(Testimony of John A. Campbell.)

The Court: Is the name spelled T-i-t-a-n, Captain?      A. Yes, sir.

Q. (By Mr. Mikkelborg): Do you recall ever making a statement to the effect that Mr. McLean of your shoreside office sent the tug out?

A. I assumed that he had.

Q. Oh, I see, you assumed he had?

A. When the towboat came out. We have a whistle signal. If we require a tug we blow two shorts and a long, which is the reverse of the ordinary towing signal, and the Puget Sound towboat wharf is quite handy to ours.

Q. Did you blow such a signal on this occasion?

A. No, sir.

Q. Captain, I believe you testified that you were from your scheduled time of 2:45 until 3:48, or you rang off engines at 3:50, I believe.

A. They are two minutes out on the time with the wheelhouse, you see. You'll find that discrepancy throughout.

Q. And that's the elapsed time required for the operation, is that correct?

A. That's the elapsed time to finish with engines, but it [379] is not—the total time there is "Finished with engines," but the ship was alongside the wharf for some time, maybe a period of ten minutes, while we operated the cargo doors on the ship's side.

Q. Would you ring off engines before the ship was all fast?

A. No. That's what I'm trying to say. Some of that time was consumed—under the weather con-

(Testimony of John A. Campbell.)

ditions the port cargo doors, which are usually open going alongside, were kept closed. We had to warp the ship into position to open the doors, which takes time.

Q. During your maneuvers off Pier 57, and correct me if I'm wrong, did you testify that during this making fast of the tug that you were heading about southwest more or less into the wind, is that correct?

A. No, it would be southeast.

Q. Southeast? A. Yes, into the wind.

Q. You were heading southeast?

A. Almost into the wind at the time, as I recollect, when he put his line aboard.

Q. When the tug put his line on board?

A. Yes. We had turned around to—that's my nearest recollection.

Q. That you had not yet turned around?

A. We had turned around. [380]

Q. You had turned around? A. Yes.

Q. And were heading southeast?

A. Back to—approaching the wharf again, in position off the wharf before turning in, coming down to a position off Pier 64 where we normally turn in.

Q. At the time you were heading southeast toward what general pier area would that be headed?

A. Well, we were heading down towards the end of the harbor with the Smith Building on the port bow, Smith Tower.

(Testimony of John A. Campbell.)

Q. Would you stop and think a moment about that, Captain? You said southeast.

A. That's the general direction.

Q. Is Smith Cove southeast from Pier 64?

A. No, east. That's east. In an easterly direction.

Q. Isn't it true that Smith Cove is northwest of Pier 64?      A. I mean the Smith Tower.

Mr. Morrow: He said the Smith Tower.

Q. (By Mr. Mikkelborg): Oh, I beg your pardon, Captain. The Smith Tower?

A. Yes.

Q. Did you have way on the ship at that time?

A. Yes, a little, very little.

Q. And were you turning at that time? [381]

A. No, as far as I recollect I was going straight ahead.

Q. You were headed southeast for the Smith Tower?

A. Well, in that general direction, down the harbor towards the Smith Tower about three or four cables off the wharf.

Q. And which way did you turn to turn up toward Pier 64, to the left or to the right?

A. To the left.

Q. To the left, so you were headed southeast when turning left?      A. That's right.

Q. You had some way on the ship?

A. Very little.

Q. As you turned left, what direction would that bring your heading?

A. That would bring her in a general northeast

(Testimony of John A. Campbell.)

—we use magnetic courses, you see, and I'm figuring these magnetic. If you want them in true I'll have to change them. Do you wish them in true?

Q. I wish just the general direction of the ship, Captain.

A. Well, you see this ship is equipped with magnetic compasses, and we use magnetic courses. Now, the general direction is northeast magnetic, which would be about east-northeast true.

Q. When you were heading southeast and turning to the left, that turn would bring you headed more and more toward [382] the east, would it not?

A. No, it would bring me more and more towards the north.

Q. Before you could head north from a heading of southeast you must necessarily turn some direction; if you were turning to the left I assume it would require you to be headed east, would it not, before you got around to the north?

A. Yes, you would go through east.

Q. Yes. A. Is that what you mean?

Q. Yes. A. Yes.

Q. And when you were headed east——

A. I'm still turning to the north.

Q. Yes, and way was on the ship, is that not right? A. Yes.

Q. And this way on the ship and the turn to the left from southeast to east and back up to north would be taking you closer inshore, is that not right, Captain?

A. I'm proceeding inshore all the time.



(Testimony of John A. Campbell.)

Q. Closing the piers at that time?

A. Yes, that's right.

Q. And did you take any soundings to determine the depth of the water in that area?

A. No, I did not. [383]

Q. Is the Princess Louise fitted with a fathometer or a sounding machine?

A. No, all we have is a hand lead and a deep sea lead.

Q. Did you at any time take any soundings to determine your position off the pier heads, particularly during this turn to the southeast and east as you were closing the shore?

A. No, I did not.

Q. So your recollection as to how far off the piers you were in the vicinity of Piers 57 and 58 and north toward Pier 64 is based solely on your recollection?

A. That is correct.

Q. Without having taken any soundings at the time or recorded any visual bearings, is that correct?

A. That is correct.

Mr. Mikkelborg: No further questions.

### Redirect Examination

Q. (By Mr. Morrow): Captain, I have just one question. How long is a cable in terms of miles?

A. One-tenth of a mile, sir.

Q. A cable is one-tenth of a mile?

A. That is correct.

Q. Thank you. [384]

Mr. Morrow: That's all.

(Testimony of John A. Campbell.)

The Court: Is two hundred yards one-tenth of a mile, is that correct?

A. That's correct.

Q. (By Mr. Morrow): That's a nautical mile, six thousand feet, is it, Captain? A. Yes.

The Court: One-tenth of a nautical mile?

Mr. Morrow: 6,080 feet, to be accurate.

The Court: 6,080?

Mr. Morrow: Yes, your Honor.

The Court: That is a nautical mile?

Mr. Morrow: Yes, your Honor.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Morrow: Mr. Guiney.

The Court: Come forward, Mr. Guiney, and be sworn as a witness.

JOHN ROBERT GUINEY,

called as a witness in behalf of respondent, being first duly sworn, was examined and testified as follows:

The Court: We need to have the spelling of your last name, Mr. Guiney. [385]

A. G-u-i-n-e-y.

The Court: G-u-i-n-e-y?

A. Yes, sir.

The Court: The first name?

A. John.

The Court: You may proceed.

(Testimony of John Robert Guiney.)

Direct Examination

Q. (By Mr. Morrow): Please state your full name, Mr. Guiney.

A. John Robert Guiney.

Q. What is your address?

A. 681 Meaford Avenue, Langford, Victoria, B. C.

Q. Will you speak a little louder, Mr. Guiney, so the reporter can get it. What is your present occupation? A. Driver salesman.

Q. Were you employed by the Canadian Pacific in March, 1955? A. Yes.

Q. How long prior to 1955 had you been employed by the Canadian Pacific?

A. About four years.

Q. In what capacity or employment did you serve? A. Seaman.

Q. Were you a seaman aboard the Princess Louise on March [386] 21, 1955?

A. Relief day man.

Q. March 21, 1955? Pardon me? A. No.

Q. What?

The Court: The answer was "No".

Q. (By Mr. Morrow): You were not?

A. Not a seaman, relief day man.

Q. Oh, you were a relief day man, yes. What were your duties as a relief day man?

A. Ship's maintenance and stand by the anchor.

The Court: I think it would help, Counsel, if you would keep your voice raised. Keep your voice

(Testimony of John Robert Guiney.)

up and speak distinctly. You have already noted, have you not, that it is pretty hard to hear one's voice in this room. That means that all of us have to speak with more effort to be sure that we are heard. Speak up.

Q. (By Mr. Morrow): Did your duties include standing by the anchor windlass on approach to Seattle? A. Yes.

Q. Had you on occasions previous to March 21, 1955, engaged in the same duties?

A. Yes.

Q. Can you state what is customary in respect to the handling of the anchor and the anchor windlass on the [387] days where there is a strong south-east wind or gale in the harbor?

A. The anchor would be got ready to be lowered and the fall would be taken off as a safety measure, and the windlass would be put in gear and the anchor would be got ready to walk out.

Q. And what, if any, was the customary length of cable to which the anchor was dropped on such occasions? A. Two cables.

Q. And what is two cables?

A. Two shackles.

Q. Or two shackles. What is two shackles?

A. Fifteen fathoms is a shackle. Thirty fathom.

Q. Now, do you have any recollection in respect to the docking or the maneuvers of the Princess Louise on the occasion of March 21, 1955?

A. Will you repeat that?

Mr. Morrow: Would you read it back?

(Testimony of John Robert Guiney.)

The Court: That will be done.

(The reporter read the last question.)

Q. (By Mr. Morrow): Do you have any recollection of what happened on that day, if anything?

A. Not—no.

Q. The answer is “No”?

A. (Witness nods his head.) [388]

Q. During your service aboard the Princess Louise as substitute leading day man did you ever have any information or knowledge during 1955 of the anchor of the Princess Louise fouling any cable in the Seattle harbor?

A. Not to my knowledge.

Q. When did any information of that kind first come to your attention?

A. About three weeks ago.

Mr. Morrow: You may inquire.

### Cross Examination

Q. (By Mr. Mikkelborg): Mr. Guiney, did you hear the Captain's testimony regarding the size and weight of the Princess Louise's anchor?

A. Yes.

Q. Does that agree with your recollection of the size and weight of the anchor on that ship?

A. Yes.

Q. I assume you handled it. A. Yes.

Q. Have you ever had an occasion, Mr. Guiney, where you were able to note or sense or realize that the anchor when out had fetched up on some obstruction? A. No.

(Testimony of John Robert Guiney.)

Mr. Mikkeltorg: No further questions. [389]

Mr. Morrow: That's all.

The Court: Step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Morrow: Call Mr. Hodge.

WILLIAM HODGE,

called as a witness in behalf of respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Morrow): Please state your full name.      A. William Hodge.

Q. How do you spell the last name?

A. H-o-d-g-e.

Q. What is your address?

A. 163 Wildwood Avenue, Victoria, B. C.

Q. Is that W-i-l-d-w-o-o-d?      A. Yes, sir.

Q. By whom are you employed?

A. Canadian Pacific Railway Company.

Q. What is your occupation?

A. I'm a master of CPR ships.

Q. How long have you been licensed as a master?

A. Since 1947. [390]

Q. Were you employed aboard the Princess Louise on March 21, 1955?      A. Yes, sir.

Q. In what capacity?      A. Chief officer.

Q. Pardon?

A. Chief officer, first officer.



(Testimony of William Hodge.)

Q. Chief officer? A. Yes, sir.

Q. As chief officer what were your principal duties?

A. Mostly navigation, sir, handling of cargo, a bit of that, and maintenance of lifeboat equipment, fire fighting equipment.

Q. Yes. In connection with your duties as first officer does it likewise include any other duties that the master might assign to you?

A. Oh, yes, sir.

Q. Do you recall what the weather was on March 21, 1955, during the approach to Seattle?

A. Yes, sir.

Q. What was it?

A. It was blowing a gale of wind from a southerly direction.

Q. Yes. Now you may refer to the log for any information that is necessary. What was the state of the tide?

A. If I remember right, sir, it was about the top of high [391] water.

Q. Now, during your maneuvering and docking at Seattle on March 21, 1955, did you at that time have any information or knowledge that the ship's anchor had struck or fouled a submarine cable?

A. No, sir.

Q. Referring you to the chart, Respondent's Exhibit A-1, I call your attention to a red line and some little circles off the face of the Bell Street Terminal and the Canadian Pacific dock. Do you see those? A. Yes, sir.

(Testimony of William Hodge.)

Q. That line, Mr. Hodge, has been identified as the location of the Seattle-Fort Lawton cable as it existed shortly prior to March 21, 1955. I wish to ask you whether prior to the trial and preparation of this trial you had any information or knowledge that the Seattle-Fort Lawton cable or any other cable laid in that position off the face of those docks?

A. I received that information, I think it was two days later after that. That would be March 23rd.

Q. March 23rd?           A. Yes.

Q. And what was that occasion?

A. There was two men, one I believe might have been an Army officer, came to the ship and told me that the Louise [392] had apparently shifted or broken the submarine cable during the docking operations.

Q. Had you any information or knowledge prior to that of any claim of injury to that cable?

A. No, sir.

Q. Now, do you recall at any time seeing a cable ship in that area?

A. There was one there several days later.

Q. That is several days after——

A. March 21st.

Q. March 21st, and where was that cable ship working?

A. Well, sir, as I remember that it was inside our course line approaching the dock and could have been off our own pier or maybe a little towards Pier 66. I didn't take any bearings on it.

(Testimony of William Hodge.)

Q. Was the cable ship at any time working in the area of the marked cable area on the chart which you have before you, being Respondent's Exhibit A-1?

A. Not to my knowledge. I didn't see it.

Mr. Morrow: That's all. You may inquire,—

Q. (By Mr. Morrow): You're familiar with that marked cable area, are you?

A. Yes, sir.

Mr. Morrow: You may inquire. [393]

### Cross Examination

Q. (By Mr. Mikkelsen): Mr. Hodge, referring to the cable area which you say you're familiar with, how far west of the shoreline does the marked cable area extend?

A. Out into the water?

Q. Out toward the west.

A. Can I measure it?

Q. Yes.

A. I'm not that familiar with it.

The Court: In measuring it, if you have sharp pointed calipers do not let them stick through the paper.

A. I don't have anything here except a rough measurement.

Q. (By Mr. Mikkelsen): That will be good enough, the way you're measuring it with a pencil, Mr. Hodge.

Mr. Morrow: That can't be too accurate.

A. I would say about 450 yards.

(Testimony of William Hodge.)

Q. (By Mr. Mikkelborg): Yes.

The Court: These are as sharp as a needle. They should not be used on that paper unless you just touch them lightly.

Q. (By Mr. Mikkelborg): Your answer was that the cable area as marked on the chart shows out to the westward some 450 yards, is that correct?

A. Yes, sir.

Q. Now, your observation of the cable ship, was that cable ship observed east or west of the end of the marked cable area?

A. I would say north, sir.

Q. You would say north?

A. Yes, up towards the Seattle Terminal dock.

Q. Well, was it far enough west to be beyond the marked portion of the cable area?

A. Oh, yes, I think so.

Q. Mr. Hodge, your duties included navigating, is that correct?      A. Yes, sir.

Q. And what was your station during the large part or the bulk of the time the Princess Louise was making her landing on the day of March 21, 1955?

A. On the first approach—well, I'll start where I—coming up the Seattle harbor I had been on watch. The master relieved me at West Point. I stood by in the wheelhouse, and the master rang down for slow speed on the engines——

Mr. Morrow: Will you talk louder, Mr. Hodge? I can hardly hear you, sir.

A. I went below, and when the master rang

(Testimony of William Hodge.)

slow on the engines I noted that time in the log book and on his [395] orders went down to the windlass room to get the anchor ready, to supervise it.

Q. (By Mr. Mikkelborg): Was that at the commencement of the approach to make the landing?

A. That would approximately have been at Pier 71, the Union Oil dock.

Q. So that would be just at the very beginning of the approach, is that right?

A. Well, you could say that, sir, yes. We were coming up to our mark.

Q. And where did you go at that time?

A. To the windlass room.

Q. To the windlass?

A. To the windlass room.

Q. To the windlass room?

A. Yes, below the forecastle head.

Q. Is that inside the hull of the ship?

A. Yes, sir, that's right.

Q. And where was your next work performed?

A. When I got the anchor down I went up on the forecastle head.

Q. And where did you go next?

A. Then I noticed that we were getting close to our own wharf then and I noticed the master was backing away, so I went to the wheelhouse to see what further orders [396] there were.

Q. And then what?

A. Well, then this towboat Titan came around

(Testimony of William Hodge.)

and the master decided that the best place to use the towboat would be on the starboard quarter with a towline.

Q. So you went back there, is that right?

A. So he ordered me down there to supervise that operation.

Q. Well, who was acting as navigating officer in your stead?

A. Nobody. Once you approach the dock the master is alone except the quartermaster. There's no mates up there.

Q. He was alone at that time?

A. Yes, sir.

Q. Where were you stationed, Mr. Hodge, during the time the ship was headed in a southeasterly direction rounding around to the east and making a turn to the left?

A. On the second approach, sir?

Q. Yes.

A. I was back on what we call the horseshoe deck. That is down in the stern of the ship.

Q. Do you have any idea from your position there how far south the Louise had gotten? Do you have any recollection or estimate on your part?

A. No, sir, I have no recollection of that because from that position I had a very limited view except for more [397] or less you might say right aft, and I was watching the towboat. I didn't watch the land.

Q. And you made no observations or——

A. None at all.



(Testimony of William Hodge.)

Q. Or you did no navigating during this time, is that right?

A. No, nothing. I don't remember taking any notice of the shore at all.

Mr. Mikkelborg: No further questions.

Mr. Morrow: That's all.

(Witness excused.)

Mr. Morrow: Call Mr. Ward.

ARNOLD WARD,

called as a witness in behalf of respondent, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Morrow): Will you please state your full name?      A. Arnold Ward.

Q. What is your address?

The Court: W-a-r-d?

A. Yes, W-a-r-d.

The Court: Arnold Ward. [398]

Mr. Morrow: Yes.

A. 5909 Oak Street, Vancouver, B. C.

Q. (By Mr. Morrow): By whom are you employed?

A. Canadian Pacific Railway.

Q. How long have you been employed by the Canadian Pacific?

A. Thirty-two years.

Q. What is your occupation?

A. Deck officer, second mate.

(Testimony of Arnold Ward.)

Q. Do you hold any licenses?

A. Yes, sir.

Q. What licenses do you hold?

A. Master home trade.

The Court: Master of what?

A. Home trade.

The Court: Master of home trade, is that what you said?

A. Home trade, yes, sir.

The Court: I do not quite know about that rank or rating, Mr. Ward. Is it a license that authorizes you to operate a vessel, navigate a vessel and manage the——

A. In what they call home trade, coasting, yes.

The Court: A coasting vessel? A. Yes.

The Court: You may proceed.

Mr. Morrow: Yes.

Q. (By Mr. Morrow): Were you employed aboard the Princess Louise on March 21, 1955?

A. Yes, sir.

Q. In what capacity?

A. Second mate.

Q. Did anything occur during the landing which came to your knowledge in respect to the fouling or the hooking of a submarine cable?

A. No, sir.

Q. When did you first hear about any such thing?

A. I think it was about the next trip down to Seattle about two days later.

Q. I see. When you came down to Seattle two

(Testimony of Arnold Ward.)

days later did you observe any cable ship in the vicinity?

A. No. I think it was about four days later that——

Q. About four days later?

A. The second trip down.

Q. The second trip down. Where was the cable ship working when you observed it?

A. Off the end of the Canadian Pacific dock.

Q. Was the cable ship working in the marked cable area that is marked on the chart?

A. No, sir. [400]

Q. What were your duties at the time of landing?

A. Of the landing?

Q. Yes.

A. Well, on that particular day I wasn't on watch, but on account of the weather and that I went up to the wheelhouse to see if I could be of any assistance.

Q. Did you notice the weather?

A. Yes, sir.

Q. What was the weather?

A. A southeast gale.

Mr. Morrow: You may inquire.

#### Cross Examination

Q. (By Mr. Mikkeltorg): Did you remain in the wheelhouse during the entire docking procedure, Mr. Ward?

A. No. I was there for the first approach in the

(Testimony of Arnold Ward.)

wheelhouse and then on the second approach when Mr. Hodge, the first mate, went down to the tow-boat the master told me to go down in the fore-castle head.

Q. Did you do any work with respect to establishing the ship's position at any given time during the approach?           A. No, sir.

Mr. Mikkeltborg: No further questions.

Mr. Morrow: No further questions. [401]

The Court: Step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Morrow: I believe the respondent rests. I would like to check the exhibits first, your Honor.

The Court: You may. Let Counsel see the exhibits.

Mr. Morrow: Not to check them, but to see which ones, if any, haven't been admitted that perhaps should have been.

The Court: My information is that all of the respondent's exhibits offered have been admitted except A-2, which I have denominated as another, meaning the second, Coast and Geodetic Survey Chart No. 6449.

Mr. Morrow: A-2 may be withdrawn, your Honor.

The Court: It is now withdrawn and will be returned to Counsel who produced it.

Mr. Morrow: The respondent rests, your Honor, and I would like to have Mr. Guiney particularly

excused from any further attendance and perhaps otherwise.

The Court: Is there any further testimony?

Mr. Mikkelborg: No, your Honor.

The Court: Does the libelant rest also?

(Brief pause.)

Mr. Mikkelborg: I would call one witness on [402] rebuttal.

The Court: Very well. Mr. Guiney is now excused and may retire if he wishes. He will not have to appear in this case further. Call that witness in rebuttal.

Mr. Mikkelborg: Call Captain Bowen.

#### JOHN H. BOWEN,

recalled as a witness in behalf of libelant, being previously duly sworn, was examined and testified further in rebuttal as follows:

#### Direct Examination

Q. (By Mr. Mikkelborg): Captain Bowen, did you hear the testimony of the officers of the Princess Louise with respect to their observation of a cable repair ship engaged or at least observed to be off Pier 64, the Canadian Pacific Railway dock?

A. Yes, sir.

Q. Were you as captain of the Lenoir engaged in repair work on the 21st, 22nd and 23rd — or rather the 23rd through the 29th of March, 1955?

A. Yes.

Q. Was there any other cable repair ship en-

(Testimony of John H. Bowen.)

gaged in the repair of that cable other than the Lenoir at that time?      A. No. [403]

Q. Would you describe the position of the Lenoir during her cable work with particular relation to the boundary of the cable area shown on Respondent's Exhibit A-1, the Coast and Geodetic Chart 6449, and that position with respect to the CPR dock, Pier 64?

A. Did you say to describe the position?

Q. Yes, would you describe the position as you worked the Lenoir with relation to the cable area and the Pier 64, CPR dock?

A. During periods that we might have been grappling for cable we could have been well north of that position. As I recall, we steamed north of where the cable would have been and dragged south toward it.

Q. Captain, is there any other way to recover a cable than to move north or south, that is at right angles to its length, in order to hook it with a grapnel?      A. No, sir.

Q. Then if the Lenoir was seen north of the cable area and westward off Pier 64, does that have any necessary relation to the position of the cable?

A. Not necessarily.

Q. Would you explain how the Lenoir might have been north of the cable area and off Pier 64?

A. We could have steamed north with the vessel prior to grappling for the cable, in which event we would have [404] lowered the grapnel to the bottom



(Testimony of John H. Bowen.)

and steamed south at right angles to the course or southwest at right angles to the course.

Q. Think about your repair, Captain Bowen. You say you could have. Advise whether that is what you did or not, if you can remember.

A. We did do that, yes, on two different occasions that I recall.

Q. During this repair period from the 23rd through the 29th of March, 1955?

A. Yes.

The Court: Mr. Reporter, will you please read the last three questions and answers.

(The reporter did as directed.)

Mr. Mikkelborg: No further questions.

Mr. Morrow: I have no questions.

The Court: You may step down.

(Witness excused.)

Mr. Morrow: May it please the Court, I would like to reopen my case for one thing that I overlooked. It doesn't involve recalling a witness.

The Court: It does not, you say?

Mr. Morrow: No, it does not.

The Court: State what it is you wish to do.

Mr. Morrow: Part of my case in my opening [405] statement was the matter of evidence pertaining to the feasibility and practicability of marking the cable area in order that the cable extending in front of the Canadian Pacific dock and the Bell Street Terminal would not be fouled, and I have here a revised chart and it shows the revised mark-

ings of the cable area in question. I would like to have it marked and admitted in evidence.

The Court: Any objection?

Mr. Mikkelborg: Yes, if the Court please. This chart I believe Counsel has reference to is a chart printed March 17, 1958. There are many conditions on this chart which have changed since March 21st to March 29th of 1955, lights, cable areas, many things are different. It appears to the libelant that it is not material on any question at issue in this case. It may be of historical interest at this date, but it has no bearing on any issues as they existed in March of 1955.

The Court: March 17, 1958?

Mr. Mikkelborg: This chart bears printing on the lower left-hand corner indicating issue of 3/17/58.

Mr. Morrow: It's a Chart 6449, your Honor, and it's offered for the very limited purpose of showing the practicability and feasibility of marking the cable area.

The Court: The objection is sustained, but [406] permission is granted for you to open your case for the purpose of making the offer of that exhibit.

Mr. Morrow: Yes.

The Court: However, as the Court has stated, the objection is sustained to the offer.

Mr. Morrow: That concludes our case, your Honor.

The Court: Very well. Does the libelant rest?

Mr. Mikkelborg: The libelant rests, your Honor.

The Court: Does each side rest?

Mr. Morrow: Yes, your Honor.

Mr. Mikkelborg: Each side rests, your Honor.

The Court: I think I would rather hear this argument tomorrow morning, if Counsel can arrange to make it then.

Mr. Mikkelborg: That's agreeable, your Honor.

The Court: How long would libelant like to argue?

Mr. Mikkelborg: The libelant would appreciate having thirty minutes.

The Court: Is that agreeable to you?

Mr. Morrow: That's agreeable, your Honor.

The Court: Thirty minutes on each side. It [407] will begin at 10:00 o'clock. I would like to have a chance to finally study these exhibits, but I want to do it at a time, if I can do it, when it is not interfering with Counsel's use of them. Have you any such attitude that there is only a certain time that you can use them? I would like to know what that is, if you have it.

Mr. Mikkelborg: As far as the libelant is concerned I believe that all exhibits can be available to the Court from this time on.

The Court: Will you need them in the morning before 10:00 o'clock?

Mr. Morrow: No, I will not need them until shortly before court in order that I might perhaps arrange them or——

The Court: I expect they can be made available in the courtroom shortly before 10:00 o'clock.

Mr. Morrow: Yes. I think both parties have

duplicates of practically all the exhibits, your Honor.

The Court: The Court would like the exhibits left in chambers this evening, Mr. Clerk.

The Clerk: Yes, your Honor.

The Court: The witnesses and parties are excused in this case and may go on about their own business if that is their wish. Counsel in the case [408] are excused until tomorrow morning at 10:00 o'clock and all may retire now if they wish.

(At 4:25 o'clock p.m. a recess herein was taken until 10:00 o'clock a.m. Friday, August 22, 1958.)

Friday, August 22, 1958, 10:00 o'clock a.m.

(All parties present as before.)

The Court: I will hear Counsel from their present stations, and each side may use thirty minutes and the libelant's side may divide that time between his opening and closing arguments according to his own wishes. I will now hear the libelant's opening argument.

(Thereupon, oral argument was presented to the Court by Mr. Mikkeltorg in behalf of libelant and by Mr. Morrow in behalf of respondent.)

The Court: From a preponderance of the evidence in this case the Court finds, concludes and decides as follows:

That the cable in question was lawfully installed

and maintained where it was at the time of [409] the collision with it and the breaking of it as disclosed by the evidence in this case.

That the location of the cable and the cable area were lawfully marked, and, in keeping with the requirements of due and ordinary care, were actually marked and charted, of which facts the master in personal charge of the vessel's maneuvers was and is in law charged with notice, and that the master and crew members assisting him in such maneuvers either knew or by the exercise of due and ordinary seamanship and care should have known of the presence of such cable and cable area, but failed to do so.

That the location and maintenance of the cable at the place and time of the accident were in all respects lawful and were in such careful and lawful condition at the time of this accident.

That those in charge of the vessel did carelessly and negligently drop her anchor upon or too close to the cable to avoid contacting the cable, and as a proximate result of such carelessness and negligence such anchor did, while the *Princess Louise* was engaged in such maneuvers, drag against and break and damage the cable, for all of which respondent is liable.

That as a proximate result of such damage and breaking of the cable the libelant has sustained the [410] following total direct damages, namely, the total sum of \$6,954.23, which constitutes a reasonable sum needed to reasonably reimburse the libelant for any and all damages directly and proximately resulting from the negligent acts and omis-



sions of the respondent and those in charge of the maneuvers of the Princess Louise at the time of the occurrence of this accident.

That no other items or amounts of claimed damages will be approved or allowed by the Court.

Is there any other issue of fact or law which either Counsel regards as one or such as must be disposed of before this case can be finally and completely adjudged and determined?

Mr. Morrow: I think of nothing, your Honor.

Mr. Mikkelborg: None, your Honor.

(There was a discussion as to time of presenting final written order.)

The Court: The judgment will also include taxable costs in favor of the libelant against the respondent.

Counsel are excused until August 28th at 10:00 o'clock in the forenoon, at which time the Court will settle and enter findings, conclusions and decree. Are there any other matters to come before the Court at this time? [411]

Mr. Mikkelborg: If the Court please, would it be possible to consider on stipulation of Counsel the substitution of copies for certain of these government documents that are required by their custodians?

The Court: If Counsel approve it, Counsel on both sides, the Court will approve the substitution of true copies for any originals on file herein and will return the originals to Counsel who produced the particular exhibit or exhibits sought to be so replaced.



Mr. Mikkelborg: Is that agreeable?

Mr. Morrow: Well, I don't know what you have in mind. I am——

The Court: The Court's statement takes care of it. I said if Counsel approve it. You may wait to see if you can approve it. If you do not, then the Court will not.

Mr. Morrow: I can't think of any exhibit in evidence which is an original which would be required by the government.

The Court: There are certain exhibits as to which I am sure you cannot accomplish that desired result. I am certain that as to certain exhibits in the record you cannot possibly accomplish that, namely, the log books and of course these charts, these C. and G. S. charts. That Permit exhibit is already a copy, is it [412] not?

Mr. Mikkelborg: Yes.

The Court: What the Court said takes care of it. If Counsel agree upon it, the Court will approve it.

Court is now recessed.

(Thereupon, at 11:15 o'clock a.m., an adjournment herein was taken.)

Monday, September 15, 1958, 10:55 o'clock a.m.

(All parties present as before.)

(Findings of Fact, Conclusions of Law and Decree were entered.)

The Court: Now, Mr. Morrow.

Mr. Morrow: May it please the Court, I would

like to move for a nunc pro tunc order permitting the marking of one exhibit which was not marked.

The Court: Have you any objection to that request to have marked as one of the respondent's exhibits that one mentioned just now by Mr. Morrow and let the Court do that nunc pro tunc? Just put on the mark that you wish and the Court will rule upon the request. [413]

Mr. Mikkelborg: There is no objection to marking it, if it was overlooked in the trial.

The Court: Why do you say "if"? Do you have objection or do you not have objection?

Mr. Mikkelborg: I have no objection to marking this if I may be advised of the number that it is to be given and may ascertain that it has not already been in.

Mr. Morrow: I assure you that it has not been already in.

The Court: Are you sure that there is no other chart like that?

Mr. Morrow: No, your Honor.

The Court: Very well. Is that sufficient for you, Mr. Mikkelborg?

Mr. Mikkelborg: There are a number of charts already in.

The Court: Counsel will have to ascertain the facts and let the Court know what their attitude is.

Mr. Mikkelborg: I'll have no objection, your Honor.

The Court: The request as made by respondent's Counsel respecting this exhibit last mentioned by him is granted and it is so ordered. I ask Counsel to proceed to the finish of this detail with the clerk in [414] accordance with the Court's order.

The Clerk: It will be Respondent's A-11.

(Coast and Geodetic Survey Chart No. 6446 was marked Respondent's Exhibit No. A-11 for identification.)

The Court: It is not admitted in evidence, it is merely marked for identification.

Mr. Mikkelborg: May the record show that it was offered and was excluded, the Court having sustained the libelant's objection to this exhibit?

The Court: Do you know by what name or identifying mark it was mentioned when the Court so ruled?

Mr. Mikkelborg: It was specified by the name Coast and Geodetic Survey Harbor Chart No. 6446 of the March, 1958 issue.

The Court: Counsel in this case are excused.

(Thereupon, an adjournment was taken.)

[Endorsed]: Filed January 14, 1959.

[Endorsed]: No. 16334. United States Court of Appeals for the Ninth Circuit. Canadian Pacific Railway Co., a corporation, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed: January 19, 1959.

Docketed: January 23, 1959.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit  
No. 16334

CANADIAN PACIFIC RAILROAD CO., a  
corporation, as owner and operator of  
the SS Princess Louise,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT ADOPTING APPELLANT'S  
STATEMENT OF POINTS FILED IN  
THE UNITED STATES DISTRICT  
COURT

Appellant, Canadian Pacific Railway Company,  
hereby adopts by reference Document #32 as the  
Statement of Points upon which appellant will rely  
in this court.

BOGLE, BOGLE & GATES,  
/s/ THOMAS L. MORROW,  
Proctors for Appellant, Canadian  
Pacific Railway Company.

[Endorsed]: Filed January 23, 1959. Paul P.  
O'Brien, Clerk.

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[Title of Court of Appeals and Cause.]

STATEMENT OF THE POINTS UPON  
WHICH APPELLEE WILL RELY

1. The trial Court erroneously failed to allow  
appellee damages based on the daily operational

costs of the appellee's cable repair ship for the period during which said ship was exclusively engaged in the cable repair occasioned by the negligent damage and breaking of the Seattle-Fort Lawton submarine cable by appellant.

2. The trial Court erroneously excluded evidence of the daily operational cost of operating and maintaining appellee's cable repair ship.

3. The trial Court erroneously excluded libellant's Exhibit No. 3 being an official government record of the direct costs made and kept in the regular course of business by appellee's chief cost accountant.

4. The trial Court erroneously concluded that the only damage recoverable by the appellee was the sum of \$6,954.23 incurred for the cable repair work performed by appellee.

5. The trial Court erroneously excluded evidence of the per diem charter value of the cable repair ship as evidence of recoverable damages.

/s/ CHARLES P. MORIARTY,  
United States Attorney,

/s/ JACOB A. MIKKELBORG,  
Assistant United States  
Attorney.

Affidavit of Mailing Attached.

[Endorsed]: Filed January 30, 1959. Paul P. O'Brien, Clerk.



